

08/10/2015

Dear Honourable Members of the Bundestag,

We write today to express our concern regarding the draft mandatory data retention law currently under consideration -- Entwurf eines Gesetzes zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten. Even though the practice of mandatory data retention has previously been struck down by the German Federal Constitutional Court and the Court of Justice of the EU, your government is again moving forward with legislation that would force telecom and Internet service providers to store the information about the calls, SMSs, location data, and IP addresses of all Germans, placing the privacy and security of all users in Germany at risk.

As the nearly daily parade of data breaches make clear, amassing the personal information of everyone in Germany exposes those data to breach, theft, misuse, and abuse. Data retained are data at risk. In addition to making troves of private user information vulnerable to malicious actors, requiring companies to hold user data longer than necessary for business purposes would create additional liability and risk, and by overriding user consent, harms trust online.

As can be seen from the litigation around previous data retention in Germany and elsewhere in Europe as well as in the Court of Justice of the EU's landmark ruling on data retention, governments have not been able to credibly demonstrate the necessity or proportionality of data retention mandates. Moreover, a "collect it all" mentality has the practical impact of overwhelming security agencies with more data than they can possibly analyze, which actually limits the intelligence value¹ with high costs in loss of user privacy and trust online.

The proposed legislation in front of you also raises several concerns in regards to German and European law. In particular, this draft legislation:

1. Makes no meaningful distinction as regards individuals subject to obligations of professional secrecy. We hope you share our belief that the communications of doctors, lawyers, journalists, and other similar professions should be kept confidential. Regardless of whether the German government intends to access these records, collecting them in the first instance places the privacy of these communications in jeopardy.
2. By requiring IP addresses to be retained, this bill would enable the German government to connect otherwise anonymous or pseudonymous posts to individual users, a practice which would derogate the right to communicate privately online.²
3. Would place an undue and onerous burden on companies operating in other European Member States who would have to comply with the provisions of this legislation if one of their customers happened to visit Germany, threatening the promise of the

¹<http://time.com/3667663/charlie-hebdo-attack-terrorism-intelligence/>

²http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc

European single market, as a recently leaked European Commission opinion makes clear.³

Across Europe, countries are repealing data retention mandates, and while we usually look to Germany as a leader on privacy issues, instead we see your government proposing a law that would effectively treat all citizens as suspects.

We join the call of users from across Germany who are urging you to reject this proposed law.⁴

Sincerely,

Denelle Dixon-Thayer
Chief Business and Legal Officer
Mozilla Corporation

³<http://bit.ly/1YNxvE0>

⁴<https://petitions.mozilla.org/data-retention/>