

# **Declaration of the "AN.ON - Anonymity.Online"**

## **Project Partners on Future Procedures**

### **Dealing with Criminal Justice Officials**

(Translated from the original German text by Derek Daniel)

September 2003

There is a tension relationship between strong anonymity and the necessity of crime prevention. This was clear to the project partners from the start of the project. The goal of the project was, therefore, on one hand, supporting the effective realization of every person's right to anonymity, but at the same time recognizing the legal needs from the side of criminal justice officials in fighting crime. The project partners feel obligated to strictly follow the law and human rights in both directions. If it should be possible, then, to track single anonymized communications connections in individual cases despite strong anonymity, there are two possibilities: 1) a past communication connection could be uncovered, or 2) a future communication connection could be tracked.

#### **1 No User Identification for the Past**

According to the telecommunication services privacy law (Teledienststatenschutzgesetzes, TDDSG), the personal data of the anonymization service users cannot be collected or saved. What's more, according to paragraph 4, section 6 of the TDDSG, a service provider is required to make anonymous or pseudo-anonymous use of the service possible. Paragraph 6, section 1 of the TDDSG allows collection and saving of usage data, including IP addresses, only if it is necessary to make use of the service possible or for billing purposes. This is not the case for the anonymization service, where use of the service occurs anonymously, thus making user data unnecessary for providing the service.

A precautionary protocolling of the connections of all users of the service would thus go against the regulations in the TDDSG and is, therefore, out of the question. Therefore, this type of protocolling has been entirely rejected by the project partners. There is no way that information identifying a user in the past could be given to criminal justice authorities.

## **2 Identifying an Individual User in the Future**

If criminal justice authorities request user information, in other words the IP address, from the anonymization service providers in the future, it can only be done under paragraphs 100 a and b of the criminal process regulation (Strafprozessordnung, StPO). Since there is absolutely no user data collected or saved in the process of running the anonymization service, a court order is required to bring about the collection of user data. According to paragraph 100 a, surveillance and recording of telecommunications can be ordered when it is suspected that someone has committed or plans to commit one of the specific crimes in the cataloged list of crimes. A further requirement is that the investigation of a person or discovery of that person's whereabouts is not possible or extremely difficult to obtain through other methods. The order may only be carried out against the suspect or persons who, based on specific facts, it is believed are passing messages to or from the suspect or allowing the suspect to use their communications connections. Such an order is limited to three months, but can be extended. The use of any data acquired is limited by further legal restrictions.

The key factor is that surveillance of a communication connection can legally only be done on an individual basis under court order based on these regulations. Mass surveillance of all anonymity service users cannot occur based on these regulations.

## **3 Transparency of the Project Partners for Criminal Justice Officials**

If a court order according to paragraphs 100 a and b of the StPO is issued on the project partners in the future, it will first be examined by legal staff at the Independent State

Center for Data Privacy (Unabhängigen Landeszentrum für Datenschutz, ULD). After that, the project partners at the Technical University, Dresden or the Free University, Berlin would carry out the technical steps to fulfill the court order only when it is appropriate.

In future cases, users of the anonymity service will be informed of possible court orders according to paragraphs 100 a and b of the StPO as quickly as possible within the limits of the law, due to the significant desire of the AN.ON project partners to maintain transparency toward the users.

Whether and how much information about ongoing investigations can be made public at what time requires further legal clarification within the project. As soon as the legal aspects have been clarified, the project partners will publish the new concept.

#### **4 Updates to this Declaration**

This declaration will be further updated as we progress. Changes will be made public on the project website without delay.