

# Swiss surveillance law will hit ISPs

By Eugene Oscapella

**S**WISS INTERNET SERVICE PROVIDERS (ISPs) are about to feel the full force of a legal obligation to conduct surveillance and make information available to criminal investigators.

A new Swiss surveillance law will require a record of almost every e-mail sent to and from Switzerland to be logged and stored for at least six months. Since the beginning of 2002, all Swiss ISPs have been legally obliged to record the time, date, and the sender/receiver IDs of all e-mails.

The Swiss government has delayed the full enforcement of the law (which will become fully binding in 2003) to allow Swiss ISPs time to install new data recording and storage technology – in many cases, at considerable cost to themselves. Sunrise, Switzerland's second-largest ISP, says it has spent over SFr1 million installing the new technology.

Responsibility for deleting records lies with the ISPs, not the Swiss authorities, which has given rise to fears that lax data retention policies may lead to information being stored for excessive periods.

According to information service Swissinfo, the data to be recorded does not include e-mail content. However, this has not quelled concern about possible threats to privacy. One Swiss legal adviser argues that the law has too many loopholes to be effective and, thus, the privacy intrusion is even less justifiable. Furthermore, he argues, criminals can avoid having their communications monitored by using e-mail addresses stored on servers outside Switzerland. In addition, investigators will not be allowed to use the surveillance data for all types of investigation. For example, surveillance warrants will not be granted for investigations of software pirates, publishers of hate speech or computer hackers.

Andrea De Werra, head of the special projects division of the Federal Communications Office, argues that the legislation is really nothing new. The law, passed in 2000, extends Switzerland's existing regulations on the surveillance of post and telecommunications (surveillance that has been in existence for many years) to include information technology.

To obtain access to the data, authorities must obtain a surveillance warrant from an investigating judge, and in certain cases, inform suspects of the action.

It seems that Swiss ISPs are not the only ones bridleing at the obligation to maintain e-mail records. *The New York Times* reported on August 2nd that six US investment banks may face millions of dollars in penalties for failure to retain e-mails. According to

the article, the firms are required to preserve all business communications that have been sent – both internally and externally – for a period of three years. For at least two years, they must be kept in an easily accessible place.

Because the firms failed to produce all the e-mail messages that the regulators expected under those rules, they now face fines totalling as much as \$10 million among them.



For further information visit:  
[www2.swissinfo.org/sen/Swissinfo.html?siteSect=111&sid=1192676](http://www2.swissinfo.org/sen/Swissinfo.html?siteSect=111&sid=1192676)

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## Finnish ISPs to monitor hate message content?

While Swiss ISPs may be required to retain e-mail records, Finnish ISPs could face a more challenging obligation. They may soon be held responsible for the content of the web pages they host, including the contents of message boards that are associated with the web pages.

The Finnish publication *Helsingin Sanomat* reported on August 6th that amendments to Finnish freedom of expression laws are being prepared, with regulations extending to communications over data networks. Current law imposes liability on the writers of messages that contain illegal material. Under the proposed legislation, ISPs would be required to track down the senders of offensive messages and stop their distribution. The law would also require Internet publications to save all material published on their pages. An apparent increase in the number of openly racist websites appears to be the immediate reason for the law.

Mika Manninen, a director of one Finnish ISP, the Jippii Group, criticised the measure, saying service providers would have to practice advance censorship. This in turn would inhibit public debate. "We are Finland's largest message board. This is an arena of national debate, and we do not want to, nor would we be able to, censor the messages in advance."

Further information: [www.helsinki-hs.net/news.asp?id=20020806IE4](http://www.helsinki-hs.net/news.asp?id=20020806IE4)

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