AMCHAM EU
AMERICAN CHAMBER OF COMMERCE
TO THE EUROPEAN UNION

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November 9th 2005

Antoine Duquesne
Member of the European Parliament
European Parliament
ASP 09G157
Rue Wiertz
1047 Brussels

Dear Mr. Duquesne,

I am writing to thank you on behalf of AmCham EU for taking the time to meet with us in Strasbourg on October 26th 2005. At that time, we offered to provide you with additional information about the specific problems related to retaining email data (Commission draft, Annex, section (b) part (3)).

Many of the largest email services are provided via the Internet. While many email service providers are in the United States, these services are available from providers in any country in the world. The vast majority of such public services are subsidised by advertising, and therefore, there are few if any checks on the veracity of personal data provided by users when registering for such a service. In other words, it would be entirely trivial for a user to mask their identity or avoid services that would be subject to the proposed retention obligations.

By contrast, large global companies with private email networks that are connected to the global Internet for business purposes may be deterred by the privacy implications of a retention scheme that targets retention of email traffic data. Enterprise email data centres such as for those financial services or health-care related industries may be deterred by potential retention of data regarding their sensitive but otherwise law abiding correspondence. These industries may choose to locate data centres in regions that would not be subject to the proposed retention obligations, which would pose an obvious competitive disadvantage to the European single market.

Irrespective of the implications for public or industry email traffic, it is without a doubt that for those EU-based services included in the proposed Directive, the costs of email traffic data retention would be astronomical. This is simply due to the huge volume of email correspondence daily on a global basis. You may be aware that email correspondence exceeds telephony usage for many users, and as each email can be sent or copied to multiple recipients simultaneously, including attachments, the volume of data that would be implied rapidly increases.

However, an additional point regarding the utility of such a large volume of email traffic data needs to be made. A conservative current estimate is that 50% of global email traffic is spam, and traffic data for this percentage would be retained as well. There is no conceivable use for this traffic to law enforcement or industry, but it would be impossible to avoid its retention and attendant costs under the current proposal. Discussions as to the control of spam are a separate issue and ongoing in many fora, but current anti-spam measures will not impact the amount of attendant data that industry would be required to retain.

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At the same time, most providers do not see a business need to retain email data. Unlike telephony, emails are not billed on an individual basis. Some providers may retain small amounts of email-related data for anti-spam diagnostic or enforcement purposes but, given the huge volumes involved, the periods of retention are only up to a week. The proposals would therefore represent a dramatic (26-times) increase in the data to be retained for certain providers and are even more onerous for many more that do not engage in limited retention at all.

In addition to knowing who called whom, another possible use for fixed telephony data is to attempt deductions regarding the presence of an individual at a location when the call was made. But even this is not possible with email, as it is a simple effort for a user to set up a computer to send an email at a particular time.

In practice, the investigative scenario involving emails that does occur is that enforcement agencies search for a particular email or set of emails (e.g., on a computer that has been seized in a raid). While the email addresses from or to whom emails have been sent cannot be traced back to an individual, there is information in emails (that most users do not see when using all common email programmes) about the technical path of the email – i.e., the "IP address" of the originating email. It is this address that provides the best possible investigative clues towards a suspect.

IP address data is generally retained by Internet providers for approximately three months. This reflects the commercial, as well as investigative utility, of the data and the fact that it is a less rapidly growing data set, incurring less significant costs. This IP address data is covered by the draft EU Directive (Annex, section (a), part (3) (a)). Although AmCham EU does not agree with the proposal's requirement for six month retention, we do recognise that this is the area on which the proposals may need to focus, and given some of the issues raised above, we sincerely hope that you will support amendments deleting email traffic data from consideration.

Should you need any further clarifications or have any other questions, please do not hesitate to contact us.

Yours sincerely,

Simon Hampton
Chair, Digital Economy Committee
American Chamber of Commerce to the European Union

The American Chamber of Commerce to the European Union (AmCham EU) is the voice of companies of American parentage committed to Europe towards the institutions and governments of the European Union. It aims to ensure an optimum business and investment climate in Europe. AmCham EU facilitates the resolution of EU – US issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Total US investment in Europe amounts to $850 billion, and currently supports over 3.5 million jobs.

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