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Working Paper

Privacy Issues in the Distribution of Digital Media Content and Digital Television

Adopted at the 42nd meeting, Berlin, 4 – 5 September 2007

Evolution of the context

Television has undergone some fundamental changes in the last decade.

The first evolution – the passage from **analogue television** to **digital television** – was mainly a conversion from analogue to digital acquisition, recording, transmission and reproduction. It provided better sound, better pictures, more channels and more choice but did not change fundamentally the form and function of the classical broadcast television.

The second evolution – the delivery of television and other audio and video services as digital signals **over broadband data networks** – significantly changes the patterns of media production, distribution and consumption. It involves the convergence of communications, computers and mass media sectors into a unique and interactive network – **the convergence of networks** – and the appearance of an increasing number of static or portable media devices able to equally interact with those three sectors – **the divergence of devices**. It also involves the introduction of new navigation paradigms allowing to access, by means of new tools or services like video search engines, peer-to-peer distribution, etc., an explosive growth of available video media – **the divergence of contents**. Finally, it potentially allows for the collection and processing of personal data gathered from different sources, for example in multiple-play services.

Important consequences of this second evolution are the introduction of new ways of distribution of digital media content, like digital interactive television, IPTV, web-based TV etc., and the replacement of the traditional cable TV set-top box by an interactive intelligent device. In these systems, users may download a specific video stream or TV channel on demand, and they may interact directly not only with TV program content but also with any other TV related contents.

While digital interactive television presents a new personalized approach to television – to provide anybody, anything, anytime, anywhere and on any device – and allows new services like T-Commerce¹, video-on-demand, home-banking and distance learning, it also introduces new threats, especially with respect to the protection of privacy of viewers.

¹ Television-based Commerce

The new digital interactive television systems are generally based on a sealed “black box” controlled by companies giving the user little or no control. Systems are closed and it is difficult, if not impossible, even for advanced users to identify what the system is doing.

One of the major threats introduced by these new ways of distribution of digital media content is the possibility to combine the emotional power of television (people relaxing at home more open to react openly without any inhibition) with the transactional power of the Internet (data mining, user modeling, intelligent agents, etc.) to gather sufficiently individualized personalized information about any viewer to adapt immediately and accordingly his viewing experience and even to modify his behavior.

When the television service is offered by an ISP within a triple- or quadruple-play service, the TV program is either viewed on a TV or on a PC. In both cases, the channel may be retrieved on demand (when the user selects the channel) and the provider can therefore identify precisely which user is watching a program at a given moment. Similarly, in the case of WebTV, where the content is provided via a website, the video stream is downloaded on demand; personal data can potentially be collected by the website operator, and also by the ISP providing the internet connectivity to the user². Finally, some systems even allow individual users to upload their own content on a video on demand platform (where it can be accessed by other users), or users may also broadcast their own live video streams on a dedicated VoD TV channel.

Recommendations and recall of fundamental principles

The Working Group, particularly aware of the significance of new ways of digital media consumption in everybody’s daily life and its leading importance for societies, democracy education and culture as cultural service ensuring freedom of information, diversity of opinion and media pluralism, and considering on the other hand the huge amount of very sensitive information that can be gathered by registering the users habits, considers that:

1. The possibility of anonymous use of digital television must be maintained. Anonymous payment methods (e.g. prepaid cards) should be offered at least as an option at no additional cost. Information systems (organisation, hardware, software) set up to deliver digital television have to be designed, built and configured to promote and assure anonymity or minimization of the use of personal data. To this end, a privacy impact assessment should be performed in advance.
2. If personal data are collected, it may only be for legitimate purposes, and the amount of data and the mechanisms implemented to process them have to be relevant and not excessive in respect of the purpose to be achieved. Allowing individuals choice of content should not inevitably require them to be identified.
3. Digital television providers should notify viewers beforehand about the exact purposes of the personal data collection and processing, the type of data collected, the place and duration of storage.

² In addition, personal information may be collected by the content industry under a “broadcast flag” regime, which the United States attempted to implement and may be pursued in other countries. In this system digital television signals are embedded with machine readable data to prevent re-distribution of copyrighted content. Privacy concerns can arise when digital rights management technology tracks use of content and reports back to the content provider on an individual’s possible copyright infringement (cf. also the Common Position of the Working Group on Privacy and Copyright Management adopted at the 27th Meeting of the Working Group on 4-5 May 2000 in Rethymnon / Crete; http://www.datenschutz-berlin.de/attachments/234/co_en.pdf).

4. The processing of viewers profiles should require their informed prior consent ("opt in"). Specifically, the communication of viewers' data or profiles by digital television providers to a third party (e.g. for marketing purposes) may only be carried out with the free and informed consent of the data subject. This consent should be distinct from the acceptance of the general contractual conditions of the digital television service. Viewers should have a right to withdraw their consent at any time with effect for the future.
5. Viewers should have the right to access, inspect and correct if necessary, preferably free of charge, all their personal data, including their profiles stored by digital television providers.
6. Collected personal data have to be protected by adequate security measures.
7. Verification of privacy compliance by independent bodies is essential.