

Report on Joint AEB/EURIM Workshop on RIP Act Section 12 Draft Order

This Workshop was held on 31 July under Chatham House rules and hosted by Globix. It was attended by officials from the Home Office implementation team and a broad range of EURIM and AEB members. This note records key points raised at the meeting.

Background

Draft Orders for both Section 12 and Section 13 of the RIP Act were issued for formal consultation in late 2000. A revised draft Order for Section 12 was issued in late June 2001 for consultation, with responses required by 24 August. Although the revised draft had included some comments made on the earlier draft, there were still sufficient issues outstanding that an informal EURIM workshop was considered useful.

Introductory Comments

Although this workshop was convened to discuss the Section 12 Order, discussion inevitably raised associated issues since it was often difficult to consider this Order in isolation. This summary, therefore, separates issues specific to the Section 12 draft Order from those that are indirectly affected by, or affect the operation of the Order.

Major Points Raised

Key points and issues raised during the workshop included:

Specific to the Section 12 Order

- There was still general concern at the crude way the capability for simultaneous interception capability was defined in paragraph 8g – with the definition of “end user” being ambiguous. It was agreed that a term such as “active communications channels” would be better.
- The reference to sources of interception requirements standards in paragraph 7 was welcomed. However, there was concern that standards changed and that there were sources of standards other than those mentioned. It was concluded that a more useful approach might be for the TAB to maintain a public list of appropriate standards (which it would probably need anyway to carry out its designated tasks). No specific changes to the wording of the draft Order were agreed.
- There was unease at the wording of paragraph 8d. In particular, it was not clear what the test of feasibility was – for example, filtering might be technically very difficult or very costly to achieve, but who decides if that cost is justifiable? However, no conclusion was reached as to how the wording might be improved.
- It was agreed that the phrase “warranted person” in paragraph 8i should be “specific telecommunications identifier” as the CSP has no way of knowing the identity of the person using the telecommunications identity. Note that the same comment applies to paragraph 8b.
- While it was generally accepted that this Order did not cover interception requirements for Section 8.4 Warrants, there were suggestions that relevant paragraphs in the Order could make this more explicit.

General Points associated with the Section 12 Order

- It was noted that all mention of costs had been removed from this version of the Order. Two key points arose during discussion
 1. That there should be transparency of the cost formulae used to derive the contribution from government under different circumstances. This would not preclude specific arrangements being made with individual CSPs when an Order was presented, but would enable those contemplating CSP activities or services to make investment judgements on a rational basis.
 2. While there was funding set aside to cover the start-up costs for individual Section 12 Notices, and for the servicing of interception warrants, there was no provision for the ongoing maintenance of the capability required under those Notices. It could not be assumed that an interception capability for a specific service, once established, would not need updating. Changes to infrastructure systems, product updates and the like could all require changes to installed interception capabilities.
- The requirement to keep secret the existence of an interception capability and, in particular, the execution of an interception warrant, could create internal personnel problems – and may also be difficult to achieve technically. CSP systems and services are often developed by central teams and managed by teams of people, often remotely from central sites, and it would be difficult to prevent them becoming aware that such capabilities existed. This could result in the need to security vet numbers of staff liable to be involved in installing or operating the interception capability – and it would not be acceptable commercially to remove a key member of staff because they had “failed” such a vetting check. The complex relationships between organisations providing different parts of an overall service could also require third party suppliers to be aware of such capabilities.

Summary

Overall, the major concerns remain those relating to how a Section 12 Order will be applied. In particular transparency of costs needs to be addressed. There are also concerns about the way secrecy will actually work given the complex nature of CSP services. There were detailed comments on the wording of the Order itself during the meeting, but it was recognised that much of the detail should not be in the Order

While officials continue to maintain that only a very few large CSPs will be affected, the Act contains no such restriction. In the absence of any legally binding statement from government, it would be prudent for any business planning to provide public CSP services to assess the possible investment impact of a Section 12 Notice. The Order, as it stands, does not easily enable such an assessment to be made. The public availability of costing formulae, and of lists of relevant standards would go some way to alleviating this.

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