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Voluntariness of Permissions Required for Security Measures

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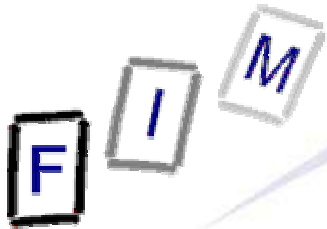
Introduction

- Security measures are a necessity for every company
- Legally seen this is no problem on principle
 - Each company can decide who is allowed to do what with its own assets (machines, products, computers, ...)
 - However, actually verifying compliance can be a problem
 - » As long as only the items alone are "verified" ⇒ legal
 - But very often this also gives information about the persons handling these items
 - » E.g. tracking a lorry also tracks the person driving it
 - » E.g. bodily searches prevent theft, but are very intrusive
- When security measures infringe personal rights, it's difficult
 - In the contract from the start: Slightly less difficulties than when introducing them later!
- Two "layers": Security measure itself & introducing it



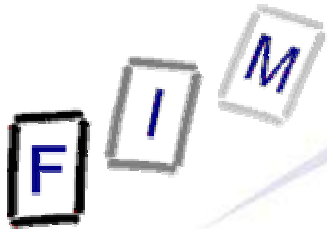
Different contexts of voluntariness

- Voluntariness: Usually discussed/defined through its opposite
 - Force: Directly influencing the actions
 - Threat and duress: Influencing the decision how to act
 - Lack of information: Withholding grounds for the decision
- Depends on the context, but some common features/rules
 - Means, purpose and their relation
 - Information requirements
- However, the standards and details are different
 - Criminal law: Rather strict (e.g. permission to injure)
 - Civil law: Rather loose (private autonomy)
 - Employment law: Third persons involved (work council)
- Sometimes giving permission is even forbidden
 - E.g. Video surveillance of restrooms



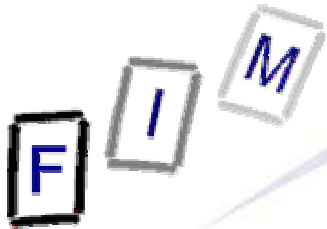
Contexts of voluntariness: Criminal law

- No offence exists if the action was permitted by the "victim"
- Example of missing voluntariness: Compulsion
 - » Principle applies everywhere but is most clear in this area!
- Three possibilities for non-voluntariness (of the act itself!)
 - **Illegality of means: The security measure itself is illegal**
 - » Example: Searching employees homes for stolen computers
 - Extremely rare, especially for security measures!
 - **Illegality of purpose: Aim of the measure is illegal**
 - » Example: Scanning E-Mail for political attitude
 - Only possible if the security measure is only a pretense
 - **Illegality of relation: Huge measure for small purpose**
 - Common, but most difficult area
 - » Goal unattainable (e.g. bodily searches for laptops)
 - » Quantitative problem (e.g. bodily search for stolen stamp)
 - » Qualitative problem (=unrelated issues)



Contexts of voluntariness: Civil law (1)

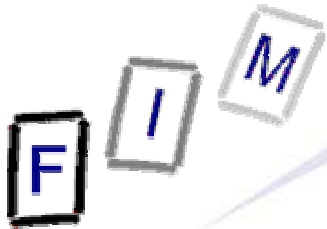
- Practical influences on the decision are more free here
 - Economic, moral, psychologic, etc. pressure is no hindrance
- New aspect: Monetary equivalence of the exchange
 - » Differs from illegality of relation: parties, not measure/goal!
 - » Larger inequivalence ⇒ More strict assessment of voluntariness
- Several possibilities to remove voluntariness (introduction!):
 - Absolute force: Overrules the will of the acting person
 - » Example: Moving someone other's hand. Not applicable here.
 - Duress: Influencing the intentions
 - » External influence (Examples: threat of dismissal or pay cut)
 - Sometimes even if made by third parties (e.g. other manager)!
 - » Reality of the fear: Objectively and subjectively measured
 - Usually no problem here!
 - » Unjustness: See criminal law (measure, goal, their relation)
 - E.g. ordinary dismissal vs. transfer to a post without security risks? ✓



Contexts of voluntariness: Civil law (2)

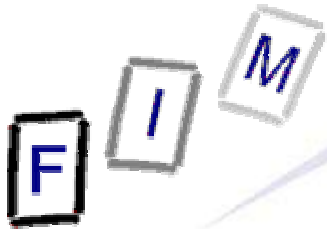
- Exploiting a quandary: Third party influences the decision
 - » Quandary (difficult situation): Seen subjectively
 - Example: Fear of dismissal (no new job: **general** quandary) ✘
 - Example: Mortgage problems upon pay cut ✓
 - » Exploiter must know or should have known of it
 - In security rather rare: Will usually not be obvious
 - » Imbalance between performances of parties
- Imbalance is rather difficult here:
 - The quid pro quo of the worker is easy to determine
 - » Personal information can even be calculated in money
 - The contribution of the company is, however, very difficult
 - » Continued existence & welfare of company, secure workplace?
- Might not be applicable regarding disadvantages which cannot be assessed in money

→ **Duress remains!**



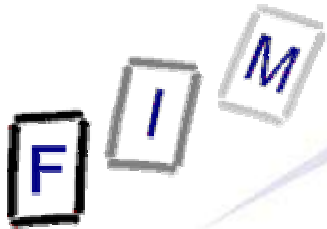
Voluntary consent

- Consent usually has no form requirements
 - But e.g. sensible personal data requires "explicit" consent
 - Better acquire it in writing (also as evidence)
- In contrast to the negative definitions above, some constitutive positive requirements will be discussed now
 - Information: No real free will possible without information
 - Freedom: The means/purpose relation exists twice
 - » Measure: Security measure vs. intended security enhancement
 - » Introduction: Security enhancement vs. "incentive" for consent
 - Special groups:
 - » Underage persons are especially protected
 - » External persons cause slightly different problems



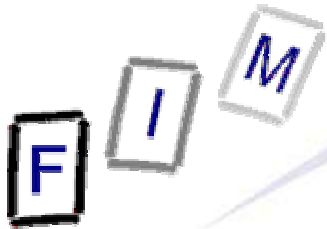
Voluntary consent: Information

- A consequence of private autonomy is to forego information
 - But without at least some information, the decision that no further information is needed is impossible!
 - Therefore many protection rules exist
 - » E.g. assistance obligations resulting from a work contract
- More information is required, when
 - the person cannot reasonably assess the security measure
 - » E.g. what data is collected & what could be derived from this
 - the measure is more in the interest of the company
 - » E.g. protecting the companies infrastructure instead of protecting workers from liability for mistakes
- Less information is necessary
 - for remote/weak dangers (too much information otherwise)
 - for illegal derivations/results (reduced, not removed!)



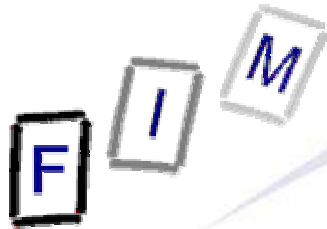
Voluntary consent: Freedom

- Relation of measure/security improvement is the difficult part
- Legality can be assessed e.g. by the following aspects:
 - » Low degree in area A can be compensated by high degree in B
 - Importance of the purpose
 - » Protecting less valuable resources requires more safeguards
 - Example: Protecting plans of future vs. very old products
 - Less intrusive alternatives
 - » Only the least intrusive of equal measures is allowed
 - Example: Personal vs. automatic scanning of E-Mails for viruses
 - Suitability/probability for succes
 - » Rather ineffective measures are more easily illegal
 - Example: Logging logins to detect unauthorized physical intrusion
 - Tracing vs. detection vs. prevention
 - » Prevention is best, tracing worst (many safeguards/high value/...)
 - Logging all web traffic vs. notifications vs. automatic blocking



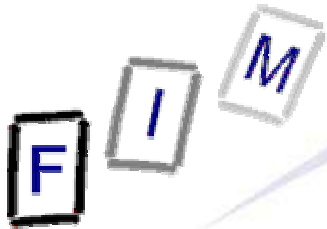
Voluntary consent: Underage and external persons

- Security measures also apply to e.g. trainees
 - They don't have full legal capacity, so consent is difficult
 - However, certain personal rights can be disposed already at a lower age (Austria: e.g. choosing the religion ≥ 14 years)
 - Still, young employees will often lack insight into potential and intangible drawbacks,
 - » More information required and less pressure allowed!
- "Transient subjects" of monitoring
 - Examples: service personnel, loan workers, guests
 - Consent is also required from them
 - Information requirements are lower
 - » Dangers for them are less (short time, not own employer, ...)
 - » They pose more danger, so importance of measures is higher
 - But: They have much less interest in the security measure



Example: Filtering personal E-Mail

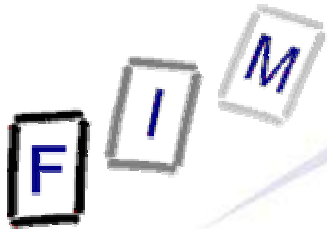
- No obligation to allow private use of E-Mail, WWW,
 - But usually allowed to some extent
- Still, filtering for viruses, spam, trojans, spyware, ... required
 - Personal information ⇒ protected even from processing
- Information requirements:
 - How and for what is scanned
 - » "Undesired" content: Exact description; reason required
 - » Automatic filtering and blocking (not deletion!): No problem
 - » Personal verification: Only with additional restrictions!
 - What to do on wrong classification
 - » Should be possible to "unblock" without another person
- Means for introduction
 - Permitting private use
 - » Forbidding previously allowed private use sometimes difficult!



Example:

Intrusion detection systems (IDS)

- Intrusion detection systems monitor internal network traffic
 - Similar in some way to permanent video surveillance
 - » Can be misused to monitor employees activities
- Two main approaches:
 - Signature detection: Searching for specific signs
 - » False positives rare, consent easily possible
 - Anomaly detection: Comparing to previous usage
 - » Data must be stored, false positive rate higher
 - » Personal verification of alerts required
 - » Consent rather difficult (Austria: work council required)
- Pseudonymous auditing might help
 - Not anonymous ⇒ consent still required
 - Personal verification without knowing who data is about
 - » Consent can be given more easily (i.e. without work council)



Conclusions

- Security measures are a problem for real voluntariness
 - Only one side profits from them, the other very much less
 - Especially when introducing them later
 - » Already in the contract: Salary is the benefit of the employee
- Common aspect are measure, goal and their relation
 - 1: Security measure and what it should achieve/protect
 - » Mostly no problem (or technically possible to adapt so it isn't)
 - 2: "Incentive" for consent and introduction of the measure
- E-Mails:
 - Scanning: what to search for influences legal possibilities
 - Depends on actions and procedures for (false) positives
- IDS:
 - Depends on the type (signature: ✓, anomaly: ?)
 - Additional precautions required or consent difficult

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Questions?

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Thank you for your attention!

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