

From: [REDACTED]@isc-ejpd.admin.ch
Subject: Regarding applicability of Swiss law to DNS recursive domain name service
Date: November 13, 2020 at 12:40 PM
Cc: [REDACTED]@ndb.admin.ch

Dear Mr Woodcock,

Thank you for your email enquiry. We apologize for the delay, which was due to an unusually heavy workload. You would like to know whether Quad9 is subject to the Federal Act on the Surveillance of Post and Telecommunications (SPTA; SR 780.1) because of its DNS resolver service and if so, whether it would have certain rights and obligations in terms of the SPTA and its implementing ordinances.

The SPTA imposes a duty to cooperate on the following categories of persons obliged to cooperate (Art. 2 SPTA):

- a. providers of postal services under the Postal Services Act (PostA);
- b. providers of telecommunications services under Article 3 letter b of the Telecommunications Act (TCA);
- c. providers of services which are based on telecommunications services and enable one-way or multipath communication (providers of derived communications services);
- d. operators of internal telecommunications networks;
- e. persons who make their access to a public telecommunications network available to third parties;
- f. professional retailers of cards and similar means which permit access to a public telecommunications network.

An assessment must be made of which category of 'persons obliged to cooperate' Quad9 falls into because of its DNS resolver services. Categories b, c and e come into consideration.

A telecommunications service provider (TSP) is a person or legal entity that transmits information for third parties or arranges for that information to be transmitted by means of telecommunications technology, and is contractually responsible for providing the promised service to these third parties. For Quad9 to be regarded as a TSP, the offered DNS resolver service would have to be a telecommunications service. Under Art. 3 let. b TCA, a telecommunications service is defined as the transmission of information for third parties using telecommunications technologies. According to the information you have given us, the DNS resolver service offered by Quad9 is used to convert domain names into IP addresses. This means that the user sends the domain as a request to the internet, the domain is then converted by the DNS into the corresponding IP address and thus leads to the correct computer. Although the DNS is used by third parties (users) to convert domain names into IP addresses and could thus record the surfing history of internet users, the DNS does not transmit any information for its users. The DNS resolver service that Quad9 offers does not involve 'the transmission of information using telecommunications technologies' and is therefore not a telecommunications service. Quad9 cannot therefore be regarded as a TSP in relation to its DNS resolver service.

A provider of derived communications services (PDCS) is a provider of services based on telecommunications services which enable one-way or multipath communication (Art. 2 let. c SPTA). This means that a derived communications service is provided in cases where the means of communication used cannot be regarded as a telecommunications service, but the service nevertheless involves 'the transmission of information for third parties using telecommunications technologies'. As mentioned above, the DNS resolver service that Quad9 provides cannot be regarded as 'the transmission of information for third parties using telecommunications technologies', with the result that Quad9 cannot be categorised as a PDCS.

'Persons who make their access to a public telecommunications network available to third parties' are defined as natural persons or legal entities whose access to a public telecommunications network is not professionally operated.. A telecommunications network enables its subscribers to communicate with each other in speech and/or in writing. The DNS, as mentioned above, allows domain names to be converted into IP addresses. The DNS, on the other hand, does not allow its users to communicate with each other in speech or in writing. Accordingly, Quad9, in providing its DNS resolver service, cannot be regarded as a 'person who makes their access to a public telecommunications network available to third parties'.

In conclusion, we confirm that Quad9 is not subject to the SPTA in providing its DNS resolver service and therefore is not required to fulfil any obligations under the SPTA and its implementing ordinances.

You will find the relevant legislation and further information on the website of the Post and Telecommunications Surveillance Service www.li.admin.ch.

OFCOM has asked us to provide you with the following information in addition to its reply of 3 November 2020: «As long as you don't offer the DNS Resolver Service as part of a telecommunication service, the obligation of confidentiality does not apply to you. It only obliges telecommunication service providers.»

We hope that we have answered your questions as far as the SPTA and its implementing ordinances are concerned. If you require any further information, please do not hesitate to contact us.

Best regards,

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