

ARTICLE 29 Data Protection Working Party



Brussels, 26 May 2010

Google Inc.
CEO

Subject: Working Party 29 Data Protection Commissioners

Dear,

I am writing to you in my capacity as Chairman of the Article 29 Working Party (hereafter: WP29). On behalf of the data protection authorities in the EU united in WP29, I call on you to improve the protection of the online privacy of users of your search engine services. Besides limiting the retention period of personal data, measures include a reduction of the possibility to identify users in the search logs and the creation of an external audit process to reassure users that you are delivering on your privacy promises, i.e. by involving an independent and external auditing entity.

In March 2008, WP29 issued a detailed opinion about search engines¹, explaining and harmonising the specific obligations for search engine providers with respect to the EU data protection directive. Prior to the opinion, WP29 sent a questionnaire to search engine providers. Upon publication of the opinion, leading search engine providers were invited to provide a written response to the opinion. This was followed by a (closed) hearing in February 2009, attended by a representative of your company and three other search engine providers.

In its opinion, WP29 stressed the sensitivity of personal data related to search queries. I know that Google also shares this concern. As you know an individual's search history contains a footprint of that person's interests, relations, and intentions and should rightly be treated as highly confidential personal data. Pursuant to the data protection directive the retention period should be no longer than necessary for the specific purposes of the processing, after which the data should be deleted. The opinion also specifically addresses the risks of incomplete anonymisation. *“Even where an IP address and cookie are replaced by a unique identifier, the correlation of stored search queries may allow individuals to be identified.”*

In response to the opinion, your company publicly announced you will “anonymize” IP addresses in your server logs after 9 months.² In practice, you have indicated that you will

¹ Article 29 Data Protection Working Party, Opinion 1/2008 on data protection issues related to search engines, WP148, adopted 4 April 2008, URL:

http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2008/wp148_en.pdf

² See: Google Blog “Another step to protect user privacy” (8 September 2008), URL:

<http://googleblog.blogspot.com/2008/09/another-step-to-protect-user-privacy.html>

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

delete the last octet of the IP addresses held in the search query logfiles after a period of 9 months.

After careful analysis of your response, WP29 has sent you a public letter welcoming your commitment to a reduced retention period but strongly suggesting that you should review your retention policy, to bring it into line with the recommended period of a maximum of 6 months.

Additionally, deleting the last octet of the IP-addresses is insufficient to guarantee adequate anonymisation. Such a partial deletion does not prevent identifiability of data subjects. In addition to this, you state you retain cookies for a period of 18 months. This would allow for the correlation of individual search queries for a considerable length of time. It also appears to allow for easy retrieval of IP-addresses, every time a user makes a new query within those 18 months. Therefore, WP29 cannot conclude your company complies with the European data protection directive.

WP29 urges you to review your anonymisation claims and make the process verifiable, preferably by developing a credible audit process involving an external and independent auditing entity. The actual techniques of anonymisation deserve an open debate, open to public scrutiny, in light of the expanding body of research on the failures of anonymisation.³

Google continues to collect, process and store personal data about and from users resident in the EU on a very large scale. It must be noted that Google is the dominant search engine provider in almost every EU member state, with a market share of up to 95% in some national search engine markets. Fair and lawful processing of personal data by search engines is becoming more and more crucial due to the explosion and proliferation of audiovisual data (digital images, audio and video content) and the increasing use of geolocation on the internet. Given the predominant role of the Google search engine in the daily lives of all citizens of the European information society, the apparent lack of focus on privacy in this area is concerning.

Notwithstanding the applicability of the data protection directive as outlined in the opinion, WP29 acknowledges the strong international component of this debate and therefore also raises this issue to a transatlantic level.

To this end, I have shared our concerns with the Federal Trade Commission (FTC). I have asked the FTC to use its authority to examine the compatibility of this behaviour with section 5 of the Federal Trade Commission Act. I have done the same with regard to two other leading search engines.

On behalf of WP29 I also continue to offer assistance to the European Commission in developing and enforcing adequate privacy principles and standards with regard to borderless data processing.

A copy of this letter will be sent to the Chairman of the FTC and the European Commission Vice-President in charge of Justice, Fundamental Rights and Citizenship.

³ See ao: Arvind Narayanan and Vitaly Shmatikov, 'Robust De-Anonymization of Large Sparse Datasets', 2008 IEEE symp on security and privacy 111 (5 february 2008), URL: http://userweb.cs.utexas.edu/~shmat/shmat_oak08netflix.pdf and Paul Ohm, 'Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization (13 August 2009), URL: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450006

Sincerely yours,

Jacob Kohnstamm
Chairman