

ARTICLE 29 Data Protection Working Party



Brussels, 16 MAI 2007
D(2007) 6016

Mr Peter FLEISCHER
Privacy Counsel
Google
38, avenue de l'Opéra
F - 75002 Paris

By email: pfleischer@google.com

Dear Mr. Fleischer,

As Chairman of the Article 29 Working Party I would like to thank you for informing us about Google's new privacy practices related to anonymizing server logs that are older than 18 – 24 months. This is very much a step in the right direction and is broadly welcome.

The Article 29 Working Party continues to appreciate Google's ongoing engagement with the data protection community on a range of issues and in particular its readiness to consult with it in contrast with a relative lack of engagement by some of the other leading players in the search engine community.

Although Google's headquarters are based in the United States, Google is under legal obligation to comply with European laws, in particular privacy laws, as Google's services are provided to European citizens and it maintains data processing activities in Europe, especially the processing of personal data that takes place at its European centre.

As you are aware, server logs are information that can be linked to an identified or identifiable natural person and can, therefore, be considered personal data in the meaning of Data Protection Directive 95/46/EC. For that reason their collection and storage must respect data protection rules.

The Article 29 Working Party considers a reduced storage period for server logs generated by the users of Google services as a valuable step to improve Google's privacy policies. However, it is of the opinion that the new storage period of 18 to 24 months on the basis indicated by Google thus far, does not seem to meet the requirements of the European legal data protection framework.

The Article 29 Working Party is concerned that Google has so far not sufficiently specified the purposes for which server logs need to be kept, as required by Article 6 (1) (e) of Data Protection Directive 95/46/EC. Taking account of Google's market position and ever-growing

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.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 01/43.

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

importance, the Article 29 Working Party would like further clarification as to why this long storage period was chosen. The Working Party would also be keen to hear Google's legal justification for the storage of server logs in general.

In addition, the Article 29 Working Party would like to draw your attention to Article 5 (3) of the Directive on privacy and electronic communications 2002/58/EC which concerns the use of "cookies" and requires, inter alia, that clear and comprehensive information about their use and the purpose of the processing be provided to the end users. Concerning the "google cookie", the lifetime of this cookie, which has a validity of approximately 30 years, is disproportionate with respect to the purpose of the data processing which is performed and goes beyond what seems to be "strictly necessary" for the provision of the service, within the meaning of Article 5 (3) of the ePrivacy Directive 2002/58/EC.

The Article 29 Working Party is of the view that Google's recently announced policy leading to "more anonymous" data should and can be further improved in order to guarantee a high level of data protection complying with the European data protection legal framework.

In this context, the Article 29 Working Party would welcome clarification as to what extent (i) the anonymized data still contain significant information about the user, e.g. the network prefix is completely identifiable in most cases; and (ii) whether it is reversible (e.g. does Google have any means of reversing the anonymization).

In particular, the Article 29 Working Party would like to recall the Resolution on Privacy Protection and Search Engines adopted in London on November 2 and 3, 2006 by the 28th International Data Protection and Privacy Commissioners' Conference which is attached. The following principles in particular should be respected by Google:

"Providers of search engines should offer their services in a privacy-friendly manner. More specifically, they shall not record any information about the search that can be linked to users or about the search engine users themselves. After the end of a search session, no data that can be linked to an individual user should be kept stored unless the user has given his explicit, informed consent to have data necessary to provide a service stored (e.g. for use in future searches).

In any case, data minimization is the key. Such a practice would also be beneficial for the providers of search engines in simplifying arrangements for meeting demands for user specific information from third parties."

The quoted Resolution addresses several concerns related to server logs, combined search queries and their storage, and detailed profiling of users. The Resolution calls upon providers of search engines to respect privacy rules and change their practices accordingly.

The Article 29 Working Party fully supports this Resolution and would appreciate the detailed views of Google on the steps which it has taken to fully implement its recommendations.

Finally I want to inform you that the Article 29 Working Party would like to deal with the questions raised in this letter at its next session in June 2007. For that reason I would be grateful to receive your response to these concerns, if possible, by the beginning of June 2007.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Schaar', written in a cursive style.

Peter Schaar

Chairman

Attachment:

Resolution on Privacy Protection and Search Engines adopted at the 28th International Data Protection and Privacy Commissioners' Conference