

ARTICLE 29 Data Protection Working Party



Brussels, 23 OCT. 2009
D(2009) D16356

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

Dear Mr. Fleischer,

On 11 February 2009, the Article 29 Working Party organised a hearing with four search engine operators. The Working Party wishes to express its gratitude for your participation on behalf of Google Inc.

The hearing focused on three topics: the retention period for personal data related to searches, including search terms, IP addresses and cookies, the method of deletion or anonymisation of personal data upon expiry of the justified retention period and the applicability of European data protection law to non-EU based operators.

The Working Party welcomes the efforts you have made to bring your policy in line with European data protection legislation as specified in the Opinion on Search engines (WP148, 4 April 2008). The Working Party especially acknowledges the improvements you have made with regard to providing comprehensive and easily accessible information about your privacy policies, and the reduction of the data retention period (before anonymisation) from 18 months to 9 months. However, there are still some issues which deserve further clarification. The Working Party invites you to provide an explanation and take additional measures with regard to the following topics:

Data retention period

Although you have already implemented a significant reduction of the data retention period, the Working Party regrets that Google has not yet found it possible to consider a six month retention period as sufficient for its purposes, given the fact that other search engine operators have already committed (albeit conditionally in one case) to a six months retention period. The Working Party is not convinced by the justifications put forward for the nine month retention period and expects Google to achieve a six month or less retention period in line with technological developments.

Anonymisation

In its Opinion on search engines, the Working Party has outlined that anonymisation must be done in a completely irreversible way.

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 D (Fundamental Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 01/190.

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

The Opinion states: *.. "Currently, some search engine providers truncate IPv4 addresses by removing the final octet, thus in effect retaining information about the user's ISP or subnet, but not directly identifying the individual. The activity could then originate from any of 254 IP addresses. This may not always be enough to guarantee anonymisation.."*¹

Your approach of deleting the last octet of IP addresses is not considered as fully meeting the requirements of full anonymisation and we encourage you to consider further technological solutions to achieve full anonymisation.

The Working Party wishes to stress that the capacity to link individual searches may reveal enough personal data to identify an individual data subject. In the Opinion 148, the Working Party outlines: *"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. For this reason, where anonymisation rather than deletion of data is chosen, the methods used should be considered carefully and performed thoroughly. This might involve the removal of parts of the search history to avoid the possibility of indirect identification of the user who performed those searches."*

Removal of personal data from snippets, cache and index

As a last point, the Working Party wants to draw your attention to your role as data controller for the content contained in the Google index, in the cache and in the snippets. You have argued you are not a data controller but act as a mere conduit of data that are under the control of the website owner, and the Working Party agrees with that rationale. However, as soon as data on websites are removed or changed, you do become the controller of the (outdated) personal data contained in the index or Google cache.

The Working Party applauds the leading role Google has played in building automated tools where both webmasters and end users can ask for removal or recrawling of webpages that have been removed or changed. However, some of the members of the Working Party have been confronted with the limited capabilities of the Google URL removal tool in their daily practice. As it turns out, submitting a page through the removal tool does result in the quasi-immediate removal of the search snippet and the cache link. However, the search results themselves do not change until the page has been recrawled. In some cases, the privacy infringing information is in the title, which remains unchanged. Also the mere fact that a page shows up for a query in the search results (typically for a name) can reveal sensitive personal information, although this information has been removed from the webpage itself. In some documented cases, it took weeks and even months to make the search results reflect the web site updates.

The Working Party trusts you will reaffirm your leading technological role in improving the removal tool so that end users can effectively remove sensitive information from search results as soon as the original website has been changed.

Taking into account the steps you have already made to improve the processing of search related personal data, and taking into account the great importance you attach to the trust of your users and your commitment to provide your users with a level of privacy that secures this trust, the Working Party strongly recommends you revise the current retention period, anonymisation strategy for search related data collected in the European Economic Area and

¹ Article 29 Working Party, Opinion on data protection issues related to search engines, WP148, 4 April 2008), page 20.

your policy with regard to the re-crawling of websites in order to comply with the principles of the European data protection legislation.

We would welcome your response within 3 months from receiving this letter.

Yours sincerely,

A handwritten signature in dark ink, reading "Alex Türk", is positioned above a single horizontal line that serves as a separator.

Alex Türk
Chairman