

ARTICLE 29 Data Protection Working Party



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D(2007) 14218

Mr Peter FLEISCHER
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By email: pfleischer@google.com

Re: Reply to your letter of 10 June 2007

Dear Mr. Fleischer,

I would like to thank you for your response of 10 June 2007 reacting to the Article 29 Working Party's letter of 16 May 2007.

The Working Party welcomes the commitment to comply with EU data protection laws that is evident in your response. Nevertheless, we have to recall our previous statement concerning in particular the applicability of European privacy laws underlined in our previous communication to you, that "*...although Google's headquarters are based in the United States, Google is under legal obligation to comply with European laws as it maintains data processing activities in Europe*".

Your response raised several issues about processing of personal data in general, and the Article 29 Working Party will address those in its opinion on search engines. Some of the topics that the Working Party will analyse therein are use of personally identifiable data as opposed to anonymised data for operation and improvement of services, storage period of server logs, storage of personal data for various purposes including security purposes and cookies. The adoption of the said opinion is expected in early 2008.

The Article 29 Working Party would also like to answer the specific questions you raised in your letter.

The Article 29 Working Party is particularly concerned by the reference to the Data Retention Directive in connection with the storage of server logs. This is not an appropriate interpretation because the scope of the Data Retention Directive does not extend to Google in this context. Article 5(2) of the Data Retention Directive specifically states that "*No data revealing the content of the communication may be retained pursuant to this Directive*".

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 06/80.

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

Search queries themselves would be considered content rather than traffic data and the Directive would therefore not justify their retention.

The Working Party is not in a position to prejudge the actual implementation of the Data Retention Directive with regard to services such as Gmail and Google Talk. Nevertheless we would like to draw your attention to our earlier opinions on the Data Retention Directive¹ in which we have always advocated a minimum and harmonized implementation while implementing adequate and specific safeguards complying with the requirements of Article 8 of the European Convention on Human Rights.

Unfortunately we are not in a position to answer your other queries on the Data Retention Directive. These questions could be better addressed to the European Commission who is responsible for monitoring implementation of the Directive in the EU Member States. However, to be of assistance, we understand that the proposals of the German Ministry of Justice requiring webmail providers to verify the identity of their account holders have since been removed as you are already aware.

Hopefully this has been of assistance. I would like to thank you for both your cooperative attitude and your willingness to share information about Google's privacy policies and innovations.

Yours sincerely,



Peter Schaar
Chairman

¹ http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2006/wp119_en.pdf,
http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2005/wp113_en.pdf