

## ARTICLE 29 Data Protection Working Party



Brussels, **23 OCT. 2009**  
D(2009) D16369

Mrs. Anne Toth  
Vice President Yahoo! Inc.  
701 1<sup>st</sup> Avenue  
Sunnydale  
CA 94089-0703  
ETAS UNIS

Dear Mrs Toth,

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 Yahoo!

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 legislation 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 acknowledges your decision to anonymise search log data within 90 days, and to keep specific and limited data for security and fraud detection reasons for no longer than six months.

However, there are still some issues which deserve further clarification.

### **Data Retention**

During the hearing you stated that some data may be retained for longer than six months in the case of litigation or a legal obligation. The Working Party would welcome greater clarity on this point as to the extent and period of retention of search log data which are retained for this explicit purpose. The Working Party is not convinced by the justifications put forward for such longer retention periods and invites Yahoo! 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.

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,*

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 01/06.

Website: [http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)

*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..”<sup>1</sup>*

Your approach of deleting the last octet of IP addresses (except in case of fraud detection, where you apply a one-way secret hash to the last octet) is not considered to meet the requirements of full anonymisation and we encourage you to consider further technological solutions to achieve full anonymisation.

As a part of your anonymisation strategy you are applying a one-way secret hash to both the cookies of unregistered users and the registration identifiers of registered users. The Working Party assumes these latter identifiers are the cookies set on the computers of registered users of your service that allow you to connect different search requests to a specific user. This approach does not prevent you from linking different search requests into an individual search profile.

You have explained during the hearing and in your written response to the Opinion that you are deleting (truncating) 50% of the registration identifiers after the application of the one-way secret hash. The Working Party is concerned that such a process may not provide sufficient anonymisation.

### **Collaboration with Microsoft**

The Working Party is aware of the collaboration between your company and Microsoft with regard to search. The Working Party confirms it has received a confirmation that you will live up to the commitments you have made to the Working Party, but still awaits the details of how your policy will be implemented now that part of the search related personal data are being processed by Microsoft.

### **Behavioural targeting**

Finally, the Working Party has some questions on the subject of behavioural targeting in combination with search, and how search queries are used to enrich interest profiles linked to a cookie or even to a user account. This will however be the subject of a more comprehensive opinion on behavioural targeting.

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 your current retention period and anonymisation strategy for search related data collected in the European Economic Area in order to comply with the principles of the European data protection legislation.

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

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

Yours sincerely,

A handwritten signature in black ink that reads "Alex Türk". The signature is written in a cursive style and is underlined with a single horizontal line.

Alex Türk  
Chairman