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GOOGLE'S NEW PRIVACY POLICY: INCOMPLETE INFORMATION AND UNCONTROLLED COMBINATION OF DATA ACROSS SERVICES

After several months of investigation led by the CNIL into Google's new Privacy Policy that came into force on March 1, the EU Data Protection authorities publish their common findings. They recommend clearer information of the users and ask Google to offer the persons improved control over the combination of data across its numerous services. Finally, they wish that Google modifies the tools it uses to avoid an excessive collection of data.

On January 24, Google announced that it would be updating its privacy policy and terms of service for almost all of its services on March 1, 2012.

Given the numerous questions raised by these changes, the Article 29 Working Party mandated the CNIL to lead the investigation into Google's new privacy policy. Two successive questionnaires were sent to Google. The company replied on April 20 and June 21, but several answers were incomplete or approximate. In particular, Google did not provide satisfactory answers on key issues such as the description of its personal data processing operations or the precise list of the 60+ product-specific privacy policies that have been merged in the new policy.

The analysis of Google's answers and the examination of numerous documents and technical mechanisms by the CNIL's experts have led EU Data protection authorities to draw their conclusions and make recommendations to Google.

Firstly, it is not possible to ascertain from the analysis that Google respects the key data protection principles of purpose limitation, data quality, data minimization, proportionality and right to object. Indeed, the Privacy policy suggests the absence of any limit concerning the scope of the collection and the potential uses of the personal data. *The EU Data protection authorities challenge Google to commit publicly to these principles.*

1. Google provides insufficient information to its users on its personal data processing operations:

Under the current Policy, a Google service's user is unable to determine which categories of personal data are processed for this service, and the exact purposes for which these data are processed.

E.g.: the Privacy Policy makes no difference in terms of processing between the innocuous content of search query and the credit card number or the telephone communications of the user ; all these data can be used equally for all the purposes in the Policy.

Moreover, passive users (i.e. those that interact with some of Google's services like advertising or '+1' buttons on third-party websites) have no information at all.

EU Data protection authorities remind Google and internet companies in general that shorter privacy notices do not justify a reduction of information delivered to the data subjects.

- **EU Data protection authorities ask Google to provide clearer and more comprehensive information about the collected data and purposes of each of its personal data processing operations. For instance, EU Data protection authorities recommend the implementation of a presentation with three levels of detail to ensure that information complies with the requirements laid down in the Directive and does not degrade the users' experience. The ergonomics of the Policy could also be improved with interactive presentations.**

2. Google does not provide user control over the combination of data across its numerous services

Combination of data across services has been generalised with the new Privacy Policy: in practice, any online activity related to Google (use of its services, of its system Android or consultation of third-party websites using Google's services) can be gathered and combined.

The European DPAs note that this combination pursues different purposes such as the provision of a service requested by the user, product development, security, advertising, the creation of the Google account or academic research. The investigation also showed that the combination of data is extremely broad in terms of scope and age of the data.

E.g.: the mere consultation of a website including a '+1' button is recorded and kept during at least 18 months and can be associated with the uses of Google's services; data collected with the DoubleClick cookie are associated to a identifying number valid during 2 years and renewable.

European Data Protection legislation provides a precise framework for personal data processing operations. Google must have a legal basis to perform the combination of data of each of these purposes and data collection must also remain proportionate to the purposes pursued. However, for some of these purposes including advertising, the processing does not rely on consent, on Google's legitimate interests, nor on the performance of a contract.

- **Google should therefore modify its practices when combining data across services for these purposes, including:**
 - **reinforce users' consent to the combination of data for the purposes of service improvements, development of new services, advertising and analytics. This could be realized by giving users the opportunity to choose when their data are combined, for instance with dedicated buttons in the services' (cf. button "Search Plus Your World"),**
 - **offer an improved control over the combination of data by simplifying and centralizing the right to object (opt-out) and by allowing users to choose for which service their data are combined**

- **adapt the tools used by Google for the combination of data so that it remains limited to the authorized purposes, e.g. by differentiating the tools used for security and those used for advertising.**

3. Google does not provide retention periods

Google refused to provide retention periods for the personal data it processes.

The recommendations of the EU Data protection authorities have been sent to Google to allow the company **to upgrade its Privacy Policy practices**. This letter is individually signed by 27 European Data protection authorities for the first time and it is a significant step forward in the mobilization of European authorities.

Several recommendations are also supported by members of APPA (Asia Pacific Privacy Authorities) and Canada's federal Privacy Commissioner has had similar concerns about various Google activities.

The CNIL, all the authorities among the Working Party and data protection authorities from other regions of the world expect Google to take effective and public measures to comply quickly and commit itself to the implementation of these recommendations.