

# Every Step You Take

## Frequently Asked Questions

### 1) What actions are consumer groups taking?

On 27 November 2018, seven European consumer organisations have announced that they will file complaints against Google with their national data protection authorities. The complaints are based on new research published by Forbrukerrådet, the Norwegian consumer organisation, a member of The European Consumer Organisation (BEUC).

BEUC and its members accuse Google of breaching the General Data Protection Regulation (GDPR) in relation to how the company tracks its users' location.

Forbrukerrådet (Norway), Consumentenbond (The Netherlands), Ekpizo (Greece), dTest (Czech Republic), Zveza Potrošnikov Slovenije (Slovenia), Federacja Konsumentów (Poland) and Sveriges Konsumenter (Sweden) will file complaints with their data protection authorities. Forbrugerrådet Tænk (Denmark) will report these practices to the Danish data protection body. vzbv from Germany is considering an action for an injunction against Google because of these practices. The Transatlantic Consumer Dialogue will bring it to the attention of the Federal Trade Commission.

### 2) What is the complaint about?

It is about how Google deceives users to provide access to their location data. The report published by Forbrukerrådet, entitled "Every Step You Take", illustrates how Google is using deceptive design, misleading information and repeated pushing to manipulate Android users into allowing constant tracking of their movements. BEUC and its members argue that what Google is doing is in breach of the GDPR.

### 3) Why is it important to treat location data carefully?

The places consumers go to can reveal a lot about their private life. For example, religious views (went to a place of worship), political stance (attended a protest march), and health related issues (visited a cancer treatment centre).

Information about a consumer's whereabouts cannot only reveal a user's identity but also their habits and their personality. This can be used to target advertising, or for individualised offers and services. If a consumer goes regularly to a bar, indicating a drinking habit, this could be valuable information for an insurance company. Similarly, someone who regularly goes for runs could be offered lowered premiums or be targeted by advertisements for sporting equipment.

#### 4) When did the research take place?

The tests described in the research were performed in July 2018 by Forbrukerrådet using a Samsung Galaxy S7 Android device running Android version 8.0.0, which had been reset to factory settings. The results were reproduced in October 2018 on the same Samsung device, and on a Google Pixel device running Android version 9. Although the settings and device setup process may vary somewhat between devices, the Google account setup can be considered representative of the user experience for all Android users.

#### 5) How does Google location tracking work?

Google mainly tracks user location through two settings, Location History and Web & App Activity, which are both integrated into the Google user account. These settings can be controlled through the Google account or through Android settings.

- Location History:

Location History is a Google account setting that continuously logs the location of the user. The location data collected through Location History is derived from GPS, Wi-Fi scanning, and Bluetooth scanning, which means that Google can track a user's precise location inside buildings as well as outside.

This setting has to be 'activated' by the user. However, as explained below, Google uses different tricks to ensure that users do so.

- Web & App Activity:

Web & App Activity is another Google account setting, which collects different user data from a variety of Google services. Certain apps and services, such as Google searches and searches made through Google Maps, are logged with location data of where the user was when he or she performed the search. In other words, users who turn Location History off, but leave Web & App Activity on, will still have some of their location data collected by Google.

This setting is activated by default in all Google accounts.

#### 6) Which practices does Google employ to push users into location tracking?

Google uses certain practices and design tricks to push users into location tracking via the Location History and Web & App Activity settings:

- i. Hidden default settings: when setting up a Google account, the actual account settings are hidden behind extra clicks. Users first have to click "More options" to see what the settings are, and whether they are enabled or disabled. Web & App Activity is enabled by default, meaning that users who did not click "More options" will not be aware that this data collection is happening.

- ii. Misleading and unbalanced information: whenever the Location History and Web & App Activity settings are presented to the user, the clearly visible information is limited to a few positive examples of what the setting entails. The information that is visible often also trivialises the extent of tracking that is going on, and how it is used.
- iii. Deceptive click-flow: although Location History has to be “actively” enabled, the set up process and click-flow is presented and designed in a way that the user is compelled to enable the setting.
- iv. Repeated nudging: users are repeatedly asked to turn on Location History, in many different contexts. On Android devices, users that do not wish to enable Location History have to decline the setting at least four times when using different services that are preinstalled on Android phones: in Google Assistant, Google Maps, Google app, and Google Photos.
- v. Bundling of services and lack of granular choices: Throughout the Google ecosystem of services, separate services or functionalities are integrated and co-dependent, or simply bundled together. Enabling Location History is required in order to enable other services that users may want to use, such as Google Assistant and Google Photos Places.
- vi. Permissions and always-on settings: When enabled, Location History is always on in the background on Android devices, regardless of whether the user is actively using a service that requires location services.

## **7) In what way does Google breach EU data protection laws?**

The GDPR requires companies to process personal data in a lawful, transparent and fair manner. Individuals should be in control of their personal data and companies must make it easy for them to make clear and informed choices about how and for what purposes their data is used.

Google’s practices leave consumers very little choice other than providing their location data, which is then used by the company for a wide range of purposes including targeted advertising.

BEUC and its members argue that these practices contradict basic principles of the GDPR, such as the lawfulness, transparency and fairness of processing, and infringe on data subject’s rights such as the right to information. In our assessment Google notably lacks a lawful legal ground for processing the location data in question. Consent is not freely given and reliance by the company on other legal grounds such as ‘legitimate interest’ is inadequate, due to the significant impact that this tracking has on the rights and freedoms of the individual.

## **8) Why do consumers not just turn off location data?**

As consumers use digital services, they are subtly being influenced in various ways, including through the design of the service’s user interface. The privacy implications of a certain service or feature are often not immediately made obvious to the consumer and the information that is provided is usually not easy to understand. Users will simply follow the

pre-determined path and stick to the default settings in order to access a service as quickly as possible.

Making the least privacy friendly choice part of the natural flow of a service can be a particularly effective dark pattern, a so-called deceptive design practice, when the user is in a rush, overwhelmed or just wants to start using the service.

Example: when setting up an Android device, the "Continue" button is always a blue button placed in the right corner. However, for some steps of the process, the blue button also entails enabling extra features. If users are not paying full attention every step of the way, they will end up unintentionally enabling a setting without knowing that they have done so or without really wanting to do so.

Also, because Google bundles Location History with other services that the user might want, users will be locked out of features if they turn it off. We believe that this is unreasonable, for example if the consumer wants to have their photos sorted by location, they have to allow location tracking.

## 9) What next?

BEUC expects the data protection authorities to fully investigate the complaints and adopt the necessary measures to force Google to comply with the law. The end result should be that Google users can finally protect their privacy and make informed choices about the use of their data. The imposition of an appropriate fine to sanction the company's wrongdoing is also an important element of the enforcement procedure.

BEUC would like to see strong, coherent, EU-wide enforcement of the rules, since these issues affect not only all Android users across the EU, but anyone that has a Google account.