

Ref.: BEUC-X-2017-083/MGO/UPA/rs

19 July 2017

Subject: Google privacy policy // Facebook emotional ad-targeting

Dear Ms Falque-Pierrotin,

I am writing to you on behalf of BEUC, the European Consumer Organisation, in order to draw your attention to three issues, two related to Google's privacy policy and one related to Facebook's ad targeting practices.

Google's privacy policy

Regarding the two Google related issues, the first one is a complaint that our member, the Danish Consumer Council (Forbrugerrådet Tænk), has submitted to the Danish Data Protection Authority. The complaint relates in particular to Google's data retention policy. The second issue is a change in Google's privacy policy which the company implemented last summer and which seems to have somehow slipped under the radar despite its significant implications.

1) Danish Consumer Council complaint

During a bilateral meeting with Google, the Danish Consumer Council learned that the company has 9-10 year old data on users with a Google account and that these data are only deleted if the user proactively asks for it to be deleted. On March 6, the Danish Consumer Council decided to report Google to the Danish Data Protection Agency and asked it to assess whether Google's indefinite data collection complies with consumer's basic right to privacy.

We believe that according to EU data protection law, such indefinite data retention policy would most likely be disproportionate and unjustified. In its Opinion 1/2008 on data protection issues related to search engines¹, the Article 29WP stated that for this type of services *"the Working Party does not see a basis for a retention period beyond 6 months. In case search engine providers retain personal data longer than 6 months, they must demonstrate comprehensively that it is strictly necessary for the service."* Google's seems to be keeping data indefinitely unless at some point in time (could be years after the data is collected) the user deletes it from his/her account via the tools provided by Google.

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¹http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2008/wp148_en.pdf

Moreover, following the major privacy policy overhaul implemented by Google in 2012, the Working Party sent a list of recommendations to the company following an in-depth investigation to assess the compliance of the new privacy policy with European Data Protection legislation. National procedures were also conducted in 2013 and 2014 in a number of EU Member States, some of which concluded that the Google's privacy policy did not meet the requirements laid down in the respective national laws. The list of compliance recommendations² sent by the Working Party specifically included various points on data retention including:

- *Google should define retention policies for all personal data processed by Google (collected, generated, produced) about active and passive users. Retention policies should be sent to European DPAs; the retention period for each type of data should be justified and should be specific to each purpose and legal basis.*
- *Clarification could be given on the personal data processing which apply to a profile based on an identifier that has not been used for a defined period. Data retention periods associated to such information could be clarified. Data retention must comply with the proportionality principle.*

From our perspective, this raises questions as to whether Google is following the Working Party recommendations. The company seems to be keeping data indefinitely unless at some point in time (could be years after the data is collected) the user deletes it from his/her account via the tools provided by Google. This would in our opinion be contrary to the proportionality principle.

Google operates across the EU and is used by millions of consumers every day in all Member States. We kindly ask the Working Party to assess whether Google's data retention policy is in line with EU data protection law and, if it is not, that it takes appropriate measures to remedy the situation. In fact, we would like to ask if national DPAs have evaluated Google's compliance with the full list of recommendations that were sent to Google. We would suggest to you as the chair of the working party to launch such a process to analyse in detail to what extent they have been taken up by the company.

2) Google privacy policy change

In summer 2016 Google amended its privacy policy³ to be able to combine data gathered through DoubleClick with information from its other services. This change gives Google even more leeway to build profiles of people as they browse the Web and use Google services, tearing down any remaining separations between Google's advertising business and the rest of its services.

The way the change was implemented was problematic from a consumer perspective, as Google understated the significance of the change by presenting it to users as some "new features" for their accounts.

Also, opting-out of these "new features" was not as easy as it should have been. If you were an existing user you could not decline straight away. You were prominently faced with an "I agree" button and if you then wanted to opt out you had to click on "more options". We understand that for new users the new combination of data is done by default.

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²http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2014/20140923_letter_on_google_privacy_policy_appendix.pdf

³ <https://www.propublica.org/article/google-has-quietly-dropped-ban-on-personally-identifiable-web-tracking>

This change has prompted privacy groups in the US to submit a complaint⁴ to the Federal Trade Commission. BEUC is also concerned about the impact of this change on EU consumers and we question whether the way it has been implemented is in line with EU data protection and/or consumer protection law. We consider that it merits to be reviewed by the Working Party.

Facebook's emotional ad-targeting

In spring 2017, a news report in The Australian uncovered that Facebook had offered advertisers the opportunity to target 6.4 million younger users, some only 14 years old, during moments of psychological vulnerability, such as when they felt "worthless", "insecure", "stressed", "defeated", "anxious" and like a "failure."

This prompted a group of 26 NGOs, including the Transatlantic Consumer Dialogue (TACD), of which BEUC is a member, to write [a letter](#) to Facebook's CEO, Mark Zuckerberg, requesting the immediate release of all the documents related to the collection and analysis of the psychological information of its teen users.

We are concerned that Facebook may be carrying out similar processing and analysis on its European users, not only teens, in order to be able to target ads based on their emotional vulnerability.

We welcomed the recent coordinated action taken by several DPAs, including CNIL, to ensure that Facebook's privacy and advertising practices comply with European data protection law. We believe that this issue related to emotional ad-targeting should also be investigated by the data protection authorities. It raises not only legal questions related to the use of sensitive data, but also serious ethical questions.

We thank you in advance for your time and consideration and look forward to meeting you soon to discuss inter alia these three cases and how consumer organisations could help DPAs to ensure the best protection of consumers' privacy.

Yours sincerely,

Monique Goyens
Director General

⁴ http://www.consumerwatchdog.org/resources/ftc_google_complaint_12-5-2016docx.pdf