

The AEPD sanctions Google for serious violation of the rights of the citizens

- The Spanish Data Protection Agency declares illegal processing of personal data carried out by Google in the framework of its new privacy policy
- The AEPD verified that Google does not give users enough information about what data they collect and for what purposes uses them, that Google combines those data gathered through various services, keeps them for an indefinite time and makes difficult the exercise of the rights of the citizens
- The combination of data collected through different services widely exceeds the reasonable expectations of the majority of users, who are not aware of it and lose control of their own personal information
- The Agency declares the existence of three violations of the LOPD and imposes a penalty of 300,000 euros to Google for each infringement, requesting him to fulfill with the provisions of law without any delay
- This action is part of the coordinated effort carried out in collaboration with the authorities of data protection of Germany, France, Holland, Italy and United Kingdom, as consequence of the lack of reaction from Google to the previous requirements

(Madrid, 19 December 2013). The Director of the Spanish Data Protection Agency, José Luis Rodríguez Álvarez, has issued a final decision which finishes the enforcement procedure started against Google in relation to the alleged non-compliance of its Privacy Policy and the Terms of Use of their services with Spanish Data Protection Law.

The resolution declares the existence of three serious violations of the Organic Law on the Protection of Personal Data (LOPD), imposes on Google a fine of 300,000 euros for each one of them and requests the company to implement without delay the necessary measures to meet the applicable legal requirements.

The investigation carried out by the Spanish Data Protection Agency (AEPD) has shown that **Google unlawfully collects and processes personal information** of both authenticated (those who log in their Google accounts) and non-authenticated users, as well as of those who act as "passive users" because they have not requested Google's services but access to web pages that include elements managed by the Company.

As a result, the Agency considers that Google seriously violates the right to the protection of personal data laid down in article 18 of the Spanish Constitution and regulated in the LOPD.

AEPD's inspection has demonstrated that Google collects personal information through nearly a hundred of services and products offered in Spain, in many cases not providing adequate information about what data is collected, what data is used for what purposes and without obtaining a valid consent of the data subjects. For example, Google does **not inform clearly** to users of Gmail that the content of mails and attached files is filtered with the aim to insert tailored advertising. Where Google does inform it uses vague terminology, with generic and unclear expressions that prevent users from knowing what they really mean. It is highly illustrative that in eight pages of its Privacy Policy, Google employs on up to 30 occasions terms such as 'we could', 'may', 'might' or "it is possible". In addition, Google uses highly ambiguous expressions to define the purposes of data processing, such as "improving user's experience". The result of that approach is an indeterminate and unclear Privacy

Policy. The lack of adequate information, particularly about the specific purposes justifying the processing of data, renders meaningless a consent that in order to be valid should be specific and informed.

On the other hand, Google combines the personal information obtained through the different services or products in order to use it for **multiple purposes that are not clearly determined**, thus violating the prohibition to use data for purposes other than those for which it was collected. This combination of data across services that allows Google to enrich the personal information it stores, exceeds the reasonable expectations of the average user, who is not aware of the mass and transversal nature of the processing of their data. Acting in this way Google uses a sophisticated technology that exceeds the capacity of the majority of users to make conscious decisions about the use of their personal information so that, in practice, they lose control over it.

Contrary to the provisions of Spanish law, Google **stores and maintains data for periods of time indeterminate or unjustified**, thereby contravening the legal mandate to cancel data when it ceases to be necessary for the purpose which determined its collection. The conservation of the data indefinitely, beyond the requirements arising from the purposes alleged at the time of collection, constitutes unlawful data processing.

Finally, the AEPD concludes that Google **hinders - and in some cases prevents - the exercise of the rights of access, rectification, cancellation and opposition**. The procedure that citizens have to follow to exercise their rights or to manage their own personal information requires them to access to an undetermined number of web pages, scattered in several links, that are not available for all types of users and, occasionally, with denominations that do not always refer to its real object. The Company itself recognizes that users must run at least seven different processes, and reserves the right to not respond to requests involving "a disproportionate effort".

Previous requirements

Google changed the privacy policy and conditions of use of the majority of its services in March 2012, creating a new model of transversal data processing based on the possibility of combining information provided by a person for a service with that obtained in others and of using it for any purpose. That leads to a use of the personal data that exceeds the expectations that a user could have with regard to the use of a service.

In response to the multiple doubts raised by the New Privacy Policy and Terms of Use, the Group of European Data Protection Authorities (GT29) agreed to start a joint investigation coordinated by the French authority, the CNIL, which concluded that the New Privacy Policy is not compatible with the European Data Protection legislation. In October 2012, the authorities of all Member States of the European Union sent a letter to Google in which the main problems were identified and a number of recommendations in order for Google to comply with European Law were made. The letter required Google to adopt the necessary measures within a reasonable period of time. In the absence of any substantial reaction on the part of Google, the GT29 decided that Member States' authorities would start enforcement actions to ensure respect for the right to data protection. In April 2013 Data Protection Authorities of France, Germany, Italy, Spain, The Netherlands and the United Kingdom launched parallel investigations and procedures pursuant to the provisions of their respective national laws, but acting in close coordination with the French CNIL acting again as leading authority. The resolution of the Agency inserts itself in the framework of this coordinated action, and is the first final decision made by one of the participating Data Protection Authorities.