
Brussels, 8 October 2013

ARTICLE 29 DATA PROTECTION WORKING PARTY

European Data Protection Authorities meet on cookies, PRISM and Passenger name record

Working document providing guidance on obtaining consent for cookies

The Article 29 Working Party, in which all 28 data protection authorities of the EU are represented, have adopted a [working document providing guidance on obtaining consent for cookies](#). The ePrivacy Directive stipulates the need for consent for the storage of or access to cookies, but there are quite some variations in practice. For example, an immediately visible notice that various cookies are being used or a notice that by further browsing on the website, the user agrees to cookies being set. Even though these practices are helpful, in isolation they are unlikely to constitute valid consent, as all the elements for obtaining consent must be present.

Together with the opinion on consent that the Working Party already adopted in 2011 and the [opinion of 2012 on the exemptions for cookie consent](#), this document provides more clarity and practical guidance on the requirements of valid consent and its main elements in the specific context of cookies. The information provided must be specific and appropriate. Furthermore, consent must be sought before the processing starts, so before (non-functional) cookies are set. Another requirement is that consent must be unambiguously and freely given, which means that there should be no doubt that the data subject has given consent and that (s)he should have a real choice and there is no risk of deception, coercion or significant negative consequences for the data subject if (s)he does not consent.

Passenger Name Record agreement EU - Canada

The Working Party furthermore sent [a letter to the LIBE Committee expressing its concerns regarding the proposal for a Council decision on the conclusion of the PNR agreement between the European Union and Canada](#). There are serious concerns about the use of PNR data for law enforcement purposes, because PNR data are generated for commercial purposes and their reliability is not checked. In addition, considering there is no factual evidence so far to demonstrate to what extent the use of the data contributes to more public safety and the (further) processing of PNR data can be very intrusive to the data subject, the Working Party stresses the need for introducing strong data protection safeguards.

PRISM

During its 92nd meeting the Working Party had a lengthy debate on PRISM and related programs. The Working Party has decided to continue to assess to what extent the protection provided for by EU data protection legislation is at risk and possibly breached and what the consequences of PRISM and related programs may be for the privacy of the European Union's citizens' personal data.

Microsoft service agreement

The Article 29 Working Party finalized and adopted its analysis of the Microsoft Service Agreement and other privacy policies. The Working Party noted Microsoft's constructive approach and identified a number of areas where improvements are required. Microsoft was asked to send its response very shortly, explaining how and when it would implement the Working Party's recommendations.

Other issues

The Working Party met with representatives of the Lithuanian presidency of the Council and from the Council of Europe in order to discuss the state of play of the on-going data protection reforms. The Working Party also discussed on-going work on opinions on legitimate interests and device fingerprinting.

Background information

The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The Article 29 Working Party is competent to examine any question covering the application of the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

http://ec.europa.eu/justice/data-protection/index_en.htm