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Should IP Addresses Be Protected as Personal Information? EU Data Protection Official Says "Yes."

By Thomas Rust

European Union officials have signaled that they may expand the definition of what is considered personal information subject to the EU's data protection regulations. During a January 21 hearing of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, Germany's data protection commissioner, Peter Scharr, said that when a person can be identified by an Internet Protocol ("IP") address, that information should be treated as personal information and protected as such. Scharr is the chairman of the Article 29 Working Party, which is an independent EU advisory body that is preparing a report on how well the privacy policies of internet search engines comply with EU privacy law. The hearing, entitled "Data protection on the internet: Google-DoubleClick and other case studies," came against the backdrop of the European Commission's ongoing investigation into the merger of Google and DoubleClick.

An IP address is a 32-bit numeric address assigned to a computer by an Internet Service Provider. The IP address serves as an identifier for the computer on the internet. During the hearing, Scharr acknowledged that IP addresses for some computers, such as those in internet cafes, may not be linked to an individual – and thus may not be personal information. However, if an individual uses the same computer on a regular basis, then the IP address could be used to associate the individual with the computer. Some internet search engines currently record and store IP addresses, citing the need to improve search results, avoid "click fraud," and fight spam.

Companies that record and store IP addresses do not always treat the addresses as personal information. However, if an IP address is deemed to be personal

information, then companies wishing to track IP addresses would need to comply with far more stringent regulations. Complying with these regulations will require a review of the protocols for recording IP addresses, including an examination of (1) whose IP addresses are recorded, (2) why the address is being recorded, and (3) what notice is being given regarding the recordation of the address. Furthermore, if a company plans to keep the IP addresses for any period of time, compliance with the regulations will require a similar analysis for storage of the data, along with an examination of the physical, technical and administrative safeguards for the stored data. Moreover, if different jurisdictions reach differing conclusions on the personal nature of IP addresses, compliance could become even more complicated.

The emerging EU position also casts doubt on the status of other numeric indicators not generally regarded as "personal" in many settings, including UCIDs (which identify specific personal computers) and other device-specific identifiers. Many devices are programmed to transmit their identifiers automatically upon connection to the internet. These configurations may need to be reconsidered if the EU continues to move in this direction.

Of course, given the heightened public sensitivity to privacy issues, even if IP addresses are not expressly determined to be personal information, as a matter of best practices, companies should examine their procedures for recording and storing this and any other potentially personal information and, as always, be sure to disclose fully and clearly their privacy practices.



For more information on the subject of this Alert or on any other privacy or information-security related topic, please contact:

New York

Erika Collins
(212) 318-6789
erikacollins@paulhastings.com

Marjorie Culver
(212) 318-6650
marjorieculver@paulhastings.com

Robert Sherman
(212) 318-6037
robertsherman@paulhastings.com

Washington, DC

Behnam Dayanim
(202) 551-1737
bdayanim@paulhastings.com

Thomas Rust
(202) 551-1787
thomasrust@paulhastings.com

Los Angeles

Michael Lindsey
(213) 683-6262
michaellindsey@paulhastings.com

London

Chris Walter
44-20-3023-5129
christopherwalter@paulhastings.com

Paris

Laurent Drion
33-1-42-99-04-44
laurentdrion@paulhastings.com

Tokyo

Etsuo Doi
81-3-6229-6119
etsuodoi@paulhastings.com