



noyb – European Center for Digital Rights
Goldschlagstraße 172/4/3/2
1140 Wien
AUSTRIA

Data Protection Commission

21 Fitzwilliam Square South
Dublin 2
D02 RD28
Ireland

COMPLAINT UNDER ARTICLE 77(1), 80(1) GDPR

noyb Case-No: C029-60

filed by

■■■■ (born on ■■■■ and residing in ■■■■
(hereinafter, the “Complainant”)

represented by

noyb – European Centre for Digital Rights, a not-for-profit organization under Article 80(1) GDPR with its registered office at Goldschlagstraße 172/4/2, 1140 Wien, Austria, and with registration number ZVR: 1354838270 (hereinafter “noyb”) (Attachment 6)

against

UCD, registered at Belfield, Dublin 4, D04 V1W8, Ireland
(hereinafter “the Controller”)

and

Google LLC, 1600 Amphitheatre Parkway Mountain View, CA 94043, USA
(hereinafter “Google”)

Communications between noyb and the Data Protection Authority in the course of this procedure can be done by email at ■■■■ with reference to the Case-No.as mentioned in the title of this complaint.

1. FACTS AND GROUNDS OF THE COMPLAINT

Processing of the Complainant's personal data using Google Analytics

1. On 14-Aug-20, at 16:46:00 the Complainant visited the Controller's website (www.ucd.ie; hereinafter "the Website"), while being logged in to the Google account associated with the Complainant's email address [REDACTED]. On the Website, the Controller has embedded the HTML code for Google Services (including Google Analytics).
2. The use of Google Analytics is subject to the *Google Analytics Terms of Service* (Attachment 1) and the *Google Ads Data Processing Terms* (Attachment 2), which have been updated effective 12.08.2020 – *New Google Ads Data Processing Terms* (Attachment 3). According to the *Google Analytics Terms of Service*, Google LCC, 1600 Amphitheatre Parkway Mountain View, CA 94043, USA ("Google") is the contractual partner of the Controller. Under point 5.1.1(b) of both the *Google Ads Data Processing Terms* and the *New Google Ads Data Processing Terms*, Google processes personal data on behalf of the Controller and qualifies as the Controller's data processor under Article 4(8) GDPR.
3. In the course of the Complainant's visit to the Website, the Controller processed the Complainant's personal data (at least the Complainant's IP address and cookie data). Apparently, at least some of this data have been transferred to Google – see Attachment 4: HAR data of the website visit.
4. Pursuant to point 10 of the *Google Ads Data Processing Terms*, the Controller has agreed that Google may store and process personal data (i.e. the Complainant's personal data) "[...] in the USA or any other country in which Google or any of its Subprocessors maintain facilities." Such transfer of the Complainant's personal data from the Controller (an EEA-based company) to Google LLC or its sub-processors in the USA (or any other non-EEA country) requires a legal basis under Article 44 et seqq. GDPR.

Transfer of the Complainant's data to the US is unlawful

5. As the CJEU has invalidated the "EU-US Privacy Shield" decision in C-311/18 ("Schrems II", hereinafter "the Judgment"), the Controller can no longer base the data transfer to Google in the US on an adequacy decision under Article 45 GDPR. Nevertheless, the Controller and Google continued to rely on the invalidated "EU-US Privacy Shield" for almost four weeks after the Judgment, as evidenced by point 10.2. of the *Google Ads Data Processing Terms* (Attachment 2).
6. The Controller may also not base the data transfer on standard data protection clauses under Article 46(2)(c) and (d) GDPR if the third country of destination does not ensure adequate protection, under EU law, of personal data transferred pursuant to those clauses (see para. 134 of the Judgment). The CJEU has explicitly found that further transfers to companies that fall under 50 U.S. Code § 1881a not only violate the relevant Articles in Chapter 5 of the GDPR but also Article 7 and 8 CFR as well as the essence of Article 47 CFR (see C-362/14 ("Schrems I"), para. 95.). Any further transfer therefore violates the fundamental right to privacy, data protection and the right to an effective remedy and to a fair trial.

7. Google qualifies as an *electronic communication service provider* within the meaning of 50 U.S. Code § 1881(b)(4) and as such is subject to US intelligence surveillance under 50 U.S. Code § 1881a (“FISA 702”). As apparent from the “Snowden Slides” (Attachment 5) and Google’s own Transparency Report (see <https://transparencyreport.google.com/user-data/us-national-security>), Google is actively providing personal data to the US government under 50 U.S. Code § 1881a.
8. Consequently, the Controller is unable to ensure an adequate protection of the Complainant’s personal data that are transferred to Google. Nevertheless, as of 12.08.2020, the Controller and Google have attempted to rely on standard data protection clauses for data transfers to the USA as evidenced by point 10.2. of the *New Google Ads Data Processing Terms* (Attachment 3).
9. Such practice completely ignores para. 135 of the Judgment, which puts the Controller under a legal obligation to refrain from transferring the Complainant’s – or any other personal data – to Google in the USA. More than one month after the Judgment, the Controller has still not done so.
10. Equally, Google continues to accept data transfers from the EU/EEA under the standard data protection clauses, despite the clear judgment by the CJEU and in violation of Articles 44 to 49 GDPR. Google further discloses EU/EEA personal data to the US government in violation of Article 48 GDPR. In multiple public statements, Google has acknowledged that it did not change this practice:

“The Privacy Shield frameworks provided a mechanism to comply with data protection requirements when transferring EEA, UK or Swiss personal data to the United States and onwards. While the Swiss-U.S. Privacy Shield currently remains valid, in light of the recent Court of Justice of the European Union ruling on data transfers, invalidating the EU-U.S. Privacy Shield, Google will be moving to reliance on Standard Contractual Clauses for relevant data transfers, which, as per the ruling, can continue to be a valid legal mechanism to transfer data under the GDPR. We are committed to having a lawful basis for data transfers in compliance with applicable data protection laws.”

https://support.google.com/analytics/answer/6004245?hl=en&ref_topic=2919631

11. Under Articles 58 and 83 GDPR, the Data Protection Authority can use its corrective and sanctioning powers both against the Controller and its processor Google.
12. According to the Judgment, the Data Protection Authority must suspend or end the transfer of personal data to the third country concerned under Article 58(2)(f) and (j) GDPR (see para. 135 of the Judgment).

2. APPLICATIONS

The Complainant hereby requests that the Data Protection Authority, by virtue of the powers provided by Article 58 GDPR

- (1) fully investigates the complaint under Article 58(1) and establishes
 - (a) which personal data were transferred from the Controller to Google LLC in the United States of America or to any other third country or international organisation;
 - (b) which transfer mechanism under Article 44 et seqq. GDPR the Controller based this data transfer on;

- (c) whether or not the provisions of the applicable *Google Analytics Terms of Service* and *(New) Google Ads Data Processing Terms* meet the requirements of Article 28 GDPR with regards to the transfer of personal data to third countries;
- (2) immediately imposes a ban or suspension of any data flows from the Controller to Google LLC in the United States of America and order the return of such data to the EU/EEA or another country that provides adequate protection under Article 58(2)(d), (f) and (j) GDPR;
- (3) imposes an effective, proportionate and dissuasive fine against the Controller and Google under Article 83(5)(c) GDPR, taking into account that
- (a) the Complainant is most likely only one of thousands of users (Article 83(2)(a) GDPR);
 - (b) more than one month has passed since the CJEU judgement C-311/18 and the Controller has not taken any steps to bring its processing operations into compliance with the provisions of the GDPR (Article 83(2)(b) GDPR).

Vienna, 17.08.2020

Attachments:

- 01 - Google Analytics Terms of Service
- 02 - Google Ads Data Processing Terms
- 03 - New Google Ads Data Processing Terms
- 04 - HAR data of the website visit
- 05 - "Snowden Slides"
- 06 - Representation Agreement