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Enforcement In Largest Fine, CNIL Duns Google €100,000 For WiFi Collection; GPS Tracking Condemned

by Jabeen Bhatti

PARIS—In the largest privacy enforcement financial penalty it has issued to date, the French data protection authority (CNIL) March 21 announced its ruling levying a €100,000 (\$141,664) fine against Google Inc. over its collection of unsecured wireless (WiFi) internet connection data using Street View mapping project vehicles.

Not only is the fine the largest privacy enforcement financial penalty the CNIL has assessed, it is also the first anywhere in the world levied by a data protection authority against Google over its Street View WiFi data collection, Yann Padova, CNIL's secretary general, told BNA March 22.

The ruling “sends a clear signal that the CNIL intends to toughen controls over data processing activities taking place on French soil,” according to a March 22 blog post by Hunton & Williams LLP.

The CNIL added in its statement that although Google stopped its Street View nonconsensual collection of user WiFi data in response to a May 2010 order (9 PVL 911, 6/21/10), the authority has continuing concerns about Google's collection of mobile device wireless access point data through its “Latitude” geo-location identification service.

“Google's collection of user data through Latitude is a separate legal issue from the Street View case and was not used in the determination of the fine,” Padova said. “Nevertheless, it is relevant [to the case] because it demonstrates that the company continues to collect users' data without their knowledge.”

CNIL Finds ‘Serious’ Violation of French Law

CNIL's enforcement committee March 17 ruled that in collecting the WiFi data through Street View Google had committed “serious” violations of France's Law on Information Technology and Liberties (78-17 of 1978, updated 2004), the CNIL statement said.

Google said that it collected only “fragmentary” information. But the CNIL said it's analysis of the raw data collected during the Street View project showed that Google recorded e-mail passwords and message content, web sites visited, as well as service set identifier (SSID) data

from WiFi networks and Media Access Control (MAC) addresses from network routers that could be used to identify and locate users.

The CNIL typically takes months to announce fines in order to give companies a chance to file an appeal first, Padova said. But “the seriousness of the problems made it necessary to quickly inform the public.”

A Google spokesman told BNA March 22 that the company is considering an appeal of the CNIL ruling but declined to discuss specific aspects of the ruling.

Padova said such an appeal, which would go to the State Council, France’s highest administrative court, would not likely be completed for up to two years.

First DPA Fine Against Google Over WiFi

The fine is the first assessed by a data protection authority against Google over its Street View WiFi data collection in over 30 other countries worldwide (9 PVL 770, 5/24/10).

After Google agreed to take remedial measures, investigations into the matter were closed by privacy protection officials in Australia (9 PVL 1020, 7/12/10), Hong Kong (9 PVL 1172, 8/9/10), Canada (9 PVL 1455, 10/25/10), the United States (9 PVL 1499, 11/1/10), and the United Kingdom (9 PVL 1670, 12/6/10).

On the other hand, the Spanish Data Protection Authority has started enforcement proceedings against Google, which could eventually result in financial sanctions of more than \$3 million (9 PVL 1455, 10/25/10). Meanwhile, South Korea’s law enforcement authorities launched criminal prosecution action against Google and the head of its operations in the country (10 PVL 125, 1/24/11).

Investigations of the Street View WiFi data collection initiated by German regional DPAs (9 PVL 911, 6/21/10) and by attorneys general from some 40 U.S. states (10 PVL 193, 2/7/11) are ongoing.

Google March 21 sent BNA a statement in which Global Privacy Counsel Peter Fleischer said the company “is profoundly sorry for having mistakenly collected payload data from unencrypted WiFi networks” in its Street View mapping operation. “As soon as we realized what had happened, we stopped collecting all WiFi data from our Street View cars and immediately informed the authorities,” Fleischer said in the statement.

CNIL Targets GPS Latitude Service

The CNIL emphasized its continued privacy protection concerns regarding Google’s Latitude service, which uses cell phone or other mobile device tracking to allow others, in real-time, to see the location on a map of the individual using the devices.

“The CNIL considers this failure to inform users unfair under the law, as it was when it was collected via Google cars,” it said. The authority added that Google has failed to notify the CNIL of its Latitude data collection. Google has argued that Latitude is not subject to French law.

Google has emphasized that the system requires user opt in consent to sharing location data.

At the time the CNIL ordered Google to cease its Street View WiFi data collection it also raised concerns about the sharing of collected user data with other Google services, including Google Maps and Google Latitude (9 PVL 911, 6/21/10).

“It turns out that it is precisely this collection of tens of thousand of WIFI access points by Google cars that allowed the company to develop an extremely powerful geopositioning data base and to thus acquire a dominant position in the sector,” CNIL said.

When it promised to stop its Street View WiFi collection “Google did not promise to stop using WiFi access point identifying data collected without users’ knowledge,” the CNIL said.

“Indeed, today Google no longer uses Google cars to collect these data. It now collects them directly via the mobile devices of users connecting to the Latitude geopositioning service, without users knowing it is doing this,” the CNIL said.

Latitude on ‘Collision Course’ With EU Authorities?

Padova noted that Google has not formally registered the Latitude system with the CNIL. He said Google argues it is not subject to French jurisdiction because it does not have data collection capabilities sited in France, and that it is not collecting personal data for the service.

“Imagine what would happen if a French company doing business in the United States tried to say that it is not subject to U.S. law,” Padova said. “Google clearly is collecting personal data through people’s smart phones with Latitude, and it clearly does have means to do this located in France and other EU countries,” he said.

“This puts Google on a collision course with EU data protection authorities,” Padova said.