**SUMMARY PROCEDURE AGAINST GOOGLE INC.**

The Spanish Data Protection Agency (AEPD) has finished the sanctioning procedure against Google Inc. declaring three serious offences for violation of arts. 6.1 (processing of data without consent), 4.5 (conservation of data when they are no longer necessary or pertinent for the purpose they were collected gathered) and 15 and 16 (obstruction of the exercise of the rights of the users) of the Organic Law 15/1999 of 13 December on Protection of Personal Data (referred to as LOPD, its initials in Spanish).

In March 2012 Google implemented a new Privacy Policy that serves as an instrument by which Google Inc. aims to legitimize a new model of transversal data processing based on the combination of the personal information collected in each of services it provides. To this end, the company employs several tools that make technically viable the integration of data across services. In addition, Google Inc. explicitly declares that it intends to use the information for future activities such as the improvement of its services or the development of new services whose characteristics and scope have not been yet disclosed.

Products and services online provided by Google are not offered as a single product but rather constitute a range of products and services, sometimes available in different domains or offered through third party web sites. Their recipients are both individuals and companies and there are various commercial schemes for the provision of those products and services.

Google Inc. collects information provided directly by users of its services whether authenticated or not. In addition, it collects information from users who are not aware of the fact that they are using a product or a service provided by Google Inc. (passive users).

Taking into account its ability to collect information and considering the technical resources at its disposal, it is concluded that Google Inc. has the ability to identify in all circumstances users of its products and services.

Google Inc. does not inform clearly and systematically on the personal data processing operations it carries out, nor on their purposes, nor on the nature of the information which is subject to processing. It uses a vague terminology (sometimes in English without proper translation into Spanish) which prevents users from knowing the precise sense and meaning of its indications. The Privacy Policy, its clarifications, its exceptions and the information related to the exercise of rights are scattered across a multitude of links which have to be visited in its entirety. Thus, the data subject cannot know the basis for the collection of their personal data, its purpose or the use that will be made of that data.

Google Inc. indicates that it can potentially combine all data collected about the users of their services without limits or nearly without limits. The combination of data is carried out regardless of the actual role –authenticated, not authenticated or passive- of the user, since Google has several parameters that allow their identification. The combination of data, as it is formulated by Google Inc., exceeds the reasonable expectations of the users, who are not aware of the massive and transversal nature of the processing of data, hampering their ability to make decisions to stay in control of the use of their personal data.

The AEPD concludes that as a result Google Inc. violates the principles of proportionality and purpose specification and limitation as well as the right to information in the collection and processing of data.

The lack of sufficient information, especially about the specific purposes that would justify the processing of personal data, prevents any consent that may be requested from or given by the user from being considered specific and informed and, in consequence, valid so as to legitimize the processing of personal data.

The violation of these principles and rights, together with the purported unlimited combination of personal data obtained from all services provided as well as from those others that may be developed in the future, prevent the legitimate interest of Google Inc. to pursue its business activities and to provide its services from prevailing over the interests and fundamental rights and freedoms of users and in particular, on the fundamental right to personal data protection.

The processing of data carried out by Google Inc. cannot either been considered as necessary for the performance of a contractual relationship with the users since most of the services do not require the conclusion of a contract and there isn’t any global contract that links users with all and each one of the services of Google Inc. that might justify the unlimited combination of data between them. It cannot be accepted that such a global link results from the mere fact of accepting the terms and conditions of use or the use of services by the users without their having made any specific, previous and active manifestation, in particular in the case of non-authenticated users.

The AEPD considers that the abovementioned behaviors constitute a violation of article 6.1 of the LOPD.

Google Inc. retains data for an undetermined period of time in the context of most of the processing operations it carries out. Only in some cases a period of conservation of the information collected is set, but without offering an adequate explanation leading to justify the choice for a retention period and not another or its suitability for the purposes that determined the collection and processing of data.

Even in those cases in which the affected user requests information on the deletion of their data Google Inc. warns about the possibility of maintaining residual copies stored on its active servers as well as data stored in its security systems.

The conservation of data for indeterminate periods of time without relation with the purposes alleged at the time of collection or the setting of storage periods that cannot be justified are also considered illicit data processing contrary to article 4.5 of the LOPD.

The LOPD recognizes and guarantees the rights of access, rectification and cancellation of personal data, among others. Google Inc. has established various channels to allow for the exercise of these rights and enabled different tools so that users can manage their personal data. However, both the information and the tools for the management of data are dispersed in a multitude of links, are not always visible and sometimes cannot be found at all, making it seriously difficult for data subjects to use them. In addition, they are not available for all types of users, are incomplete and appear with names which do not always describe their real purpose or content.

The 'control panel' that Google Inc. claims to offer is only available to authenticated users and focused only on certain products, not allowing access or deletion of all the information collected. Therefore, authenticated users do not have access to all their data, and the unauthenticated or "passive" users do not have access to data that Google Inc. collects as a consequence of their use of its products and services. Passive users, who use the services provided by Google Inc. through third party websites, do not get any information on the processing of their personal data or about their rights as data subjects.

The Privacy Policy explicitly recognizes that Google Inc. reserves the right to not respond to requests involving a disproportionate technical effort.

The AEPD concludes that all these omissions and obstacles to the exercise by the users of their rights constitute an infringement of articles 15 and 16 of the LOPD.

The resolution imposed three fines of €300,000 each and requires Google Inc. to adopt the necessary measures to put an end to the infringements.