



<b>Preliminary control report</b>		
Case number: 11/00906 Date of control: 27.09.2011 Date of report: 13.08.2012	Control object: Norwegian Directorate of Taxes Location: Oslo	Prepared by: Renate Thoreid Lars-Otto Nymoen Jørgen Skorstad

## **1 Introduction**

The Norwegian Data Protection Authority carried out a control of the Directorate of Taxes on 27 September 2011. The control was carried out in pursuance of Section 44 of the (Norwegian) Personal Data Act, cf. Section 42, third subsection.<sup>1</sup>

The topic of the control was the Directorate of Taxes' processing of personal data using Google Analytics on the Directorate of Taxes' website [www.skatteetaten.no](http://www.skatteetaten.no).

The following is a description of the factual conditions identified during the control activities. These conditions are described as they appeared at the time of the control. The report is mainly based on the information provided verbally by the control object during the control, but also on documentation submitted by the Directorate of Taxes in advance.

The control report constitutes the basis for the Data Protection Authority's evaluations and orders, if any.

Note that only the legal aspects of the service covered by the scope of the Personal Data Act with associated Regulations have been evaluated, cf. Section 42 of the Personal Data Act. There are also some references to other rules and regulations, including the (Norwegian) Electronic Communications Regulations.<sup>2</sup> This does not indicate that the Data Protection Authority considers enforcement of these regulatory requirements to be included among its duties. The agency has found it appropriate, however, to point out to the control object certain other rules of relevance in the present case.

## **2 Present during the control**

### **2.1 From the Directorate of Taxes:**

- Jan Christian Sandberg, Director of Department
- Lucie Aunan, Director of Services
- Frithjof Indseth, Service Owner
- Erling Solberg, System Lawyer
- Svein Mobakken, Director of Department
- Andre Kristianslund, Adviser

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<sup>1</sup> Act of 14 April 2000 No. 31 relating to the processing of personal data.

<sup>2</sup> Regulations of 16 February 2004 No. 401 relating to electronic communications networks and electronic communications services.

## 2.2 From the Data Protection Authority:

- Lars-Otto Nymoene, Senior Engineer, Audit and Security Division
- Renate Thoreid, Senior Engineer, Audit and Security Division
- Jørgen Skorstad, Senior Adviser, Legal Division

## 3 Documentation submitted by the Directorate of Taxes

The Directorate of Taxes submitted the following documentation prior the control:

- Overview of which analysis tools are used on [www.skatteetaten.no](http://www.skatteetaten.no), designated by product name and supplier
- Map of the flow of information for the various tools
- Agreements entered into with the suppliers of the analysis tools

## 4 In general on processing of personal data

### 4.1 The Personal Data Act and the role of the Data Protection Authority

The duties of the Data Protection Authority include verification that statutes and regulations which apply to the *processing of personal data* are complied with, cf. Section 42, third subsection of the Personal Data Act.

As a point of departure, the mandatory provisions of the Personal Data Act with associated Regulations apply to all natural and legal persons "*responsible for processing of personal data* wholly or partly by *automatic means*", cf. Section 3 of the Act.<sup>33</sup> Thus, the substantive scope and extent of the Act is stipulated in this section.

"*Processing of personal data*" is defined in the Act as any use of personal data. Such uses include collection, registration, storage and disclosure.<sup>4</sup> Only information which can be linked either directly or indirectly to an identifiable individual constitutes *personal data*. Processing of information on anonymous persons is not covered by the scope of the regulatory requirements.<sup>5</sup>

Thus, the Personal Data Act will – at least in principle – apply when personal data is processed via the Internet.<sup>6</sup> See also the introduction of the report, as well as the notice dated 1 September 2011.

References to relevant provisions of the Personal Data Act in this case will be included below.

### 4.2 The controller

The mandatory provisions of the Personal Data Act address primarily "*the controller*". Correct assignment of the controller responsibility is therefore an essential precondition for further application of the provisions of the Act.

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<sup>3</sup> Our emphasis.

<sup>4</sup> Not exhaustive.

<sup>5</sup> Legally defined terms are listed in Section 2 of the Act.

<sup>6</sup> Important limitations apply, see Section 3, second subsection, Section 4 and Section 7 of the Personal Data Act, for example.

According to Section 2, no. 4 of the Personal Data Act, there are two key factors for determining the responsible party:

- who determines the purpose of the processing of the personal data in question
- who determines which means are to be used

In this case, the Directorate of Taxes is the party which decided that the activity on the website [www.skatteetaten.no](http://www.skatteetaten.no) will be analysed for the purposes designated below. The Directorate of Taxes is also the party which decided that these analyses are to be carried out using Google Analytics.

Based on this, the Data Protection Authority assumes that the Directorate of Taxes is the controller responsible for all personal data processed using Google Analytics in connection with visits to the agency's website. This entails that the Directorate of Taxes will be responsible for the legal aspects in connection with the processing of the IP addresses of the visitors to [www.skatteetaten.no](http://www.skatteetaten.no).

This responsibility also includes all further processing on Google's servers in the United States. The Data Protection Authority assumes that Google Inc. functions as the Directorate of Taxes' *processor* in this case.<sup>7</sup>

The Data Protection Authority emphasises that the elements addressed in this section are key preconditions for the conclusions of the report.

#### **4.3 Data subject**

The obligations stipulated in the form of regulatory requirements are often reflected in corresponding rights. In the Act and Regulations, the holder of the legal rights is referred to as the "*data subject*".<sup>8</sup> In this case, the data subject will normally correspond to the party visiting [www.skatteetaten.no](http://www.skatteetaten.no) – see Section 5.2 of the report below.

### **5 On the analysis tool**

#### **5.1 Introduction**

Google Analytics is an Internet-based tool which may be used to analyse the traffic on a website, including any underlying websites. The tool can tally the number of visitors, where the visitors are located when the visit takes place, at what time the visit occurred, which websites the visitors arrived from, which underlying websites are visited, etc. Google Analytics is provided by Google Inc. (hereinafter 'Google').

To be able to use the service, the user must establish a Google Analytics account. When the account is to be established, the user must register the address of the website to be analysed, in addition to the name of the account and the contact information.

The user must add a tracking code on its websites to activate Google Analytics. The process is described on Google's website, where the tracking code is made available and copied.<sup>9</sup> Afterwards

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<sup>7</sup> See the definition of the term in Section 2 no. 5 of the Personal Data Act.

<sup>8</sup> See the definition of the term in Section 2 no. 6 of the Personal Data Act.

<sup>9</sup> [www.support.google.com/googleanalytics](http://www.support.google.com/googleanalytics)

Google Analytics can start collecting relevant information as a basis for generating various different reports, which are then made available for the user.

The Directorate of Taxes has stated that the agency started using the analysis tool in the autumn of 2010.

## **5.2 Processing of IP addresses via Google Analytics on [www.skatteetaten.no](http://www.skatteetaten.no)**

For the sake of simplicity, the IP addresses involved in this case will hereinafter be termed "*the IP address(es) of the visitor(s)*", "*the IP addresses*", or similar.

The communication generated using the Google Analytics code is described in a document available from Google's website.<sup>10</sup> The main features of the communication flow between on visitor, [www.skatteetaten.no](http://www.skatteetaten.no) and Google may be described as follows:

1. The visitor's web browser downloads a web page from [www.skatteetaten.no](http://www.skatteetaten.no) with the Google Analytics code.
2. The visitor's web browser then downloads a JavaScript with the tracking code from Google's server ([http\[s\]://www.google-analytics.com/ga.js](http[s]://www.google-analytics.com/ga.js)).
3. After the tracking code has collected data about the visitor, the visitor's web browser requests a GIF image from Google's server, which Google Analytics then uses for logging and processing of the information.

When the visitor views a web page from [www.skatteetaten.no](http://www.skatteetaten.no) with the Google Analytics code, the visitor's IP address is communicated to Google. This is due to the direct request from the visitor submitted to Google as described in steps 2 and 3 above.

The submitted document titled "*Avtalevilkår for Google Analytics*" (Terms of Service for Google Analytics) also indicates that the visitors' IP addresses are forwarded and stored on Google's servers in the United States.

In the documents submitted to the Data Protection Authority, the Directorate of Taxes states that the IP addresses are anonymised. The Directorate of Taxes describes the process as follows:<sup>11</sup>

*"A JavaScript is loaded in the web browser and creates an array locally in the memory. The tracking code and the anonymisation function are pushed in the array and register who the data belongs to and that the final octet of the IP address is to be deleted before the data is sent from the web browser."*

The Directorate of Taxes also states:

*"All traffic on the websites is registered, but the users' IP addresses are anonymised before being stored. This is achieved by removing the two last elements of the addresses. This will ensure the user may be located within a large area, but will not allow identification. As this is an online tool, the data is stored at Google."*

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<sup>10</sup> [code.google.com/apis/analytics/docs/concepts/gaConceptsOverview.html](http://code.google.com/apis/analytics/docs/concepts/gaConceptsOverview.html)

<sup>11</sup> In a letter dated 20 September 2011, Appendix 1.

The visitors to [www.skatteetaten.no](http://www.skatteetaten.no) have access to the following information on the website itself:<sup>12</sup>

***"Analysis tool for web statistics***

*The Tax Administration uses the analysis tool Google Analytics to collect and evaluate information on the visitors' use of the website. Google Analytics uses information cookies. As the party with controller responsibility for Skatteetaten.no, the Tax Administration decides which information may be obtained by Google regarding use of the website. Google Analytics only receives general web statistics, such as type of web browser, time, language and which website the user arrives from.*

*In accordance with normal practice on the Internet, the user's IP address will be registered by the website Skatteetaten.no. The Tax Administration has decided, however, to add a script which will erase the last digits from the IP addresses before the information is submitted to Google Analytics. This will make it possible for the analysis tool to estimate the geographical location of the user, but the address cannot be used to identify the individual user. The information received is handled in accordance with Google's guidelines for protection of privacy."*

This means that the information published by the Directorate of Taxes is ambiguous as regards the specific point in time when anonymisation takes place. The Directorate of Taxes was therefore asked to clarify this aspect during the control.

The Directorate stated that the anonymisation takes place after the information has been submitted, via Google Analytics, to Google's servers. But it has proven impossible, however, to determine the exact point in time when the anonymisation takes place. The Directorate stated that it had tried several times to obtain an answer from Google regarding this issue, but that Google had not replied to the inquiries from the Directorate.

### **5.3 Use of information cookies**

An information cookie – or just a cookie – may be defined as

*"a limited amount of data which a web browser receives from websites visited by the user and which is stored as a file on the user's hard disk. A cookie may contain information registered by the user on the site, such as user name and password in an encrypted format, which is then submitted to the website upon subsequent visits. In this way the information need only be registered once. Web publications often use information cookies to collect information about the visitors to the website, and a visit to a website will often entail collection of several cookies, some to the publication itself and others to the advertisers on the website. Web browser and firewalls may be set up to not accept cookies."*<sup>13</sup>

Google's description of the information cookies used by Google Analytics is as follows:

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<sup>12</sup> [www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/](http://www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/)

<sup>13</sup> According to the encyclopaedia Store Norske Leksikon, online version at <http://snl.no/cookie/IT>

*This cookie is typically written to the browser upon the first visit to your site from that web browser. If the cookie has been deleted by the browser operator, and the browser subsequently visits your site, a new \_\_utma cookie is written with a different unique ID. This cookie is used to determine unique visitors to your site and it is updated with each page view. Additionally, this cookie is provided with a unique ID that Google Analytics uses to ensure both the validity and accessibility of the cookie as an extra security measure.*

### **Identifying Unique Visitors**

*Each unique browser that visits a page on your site is provided with a unique ID via the \_\_utma cookie. In this way, subsequent visits to your website via the same browser are recorded as belonging to the same (unique) visitor. Thus, if a person interacted with your website using both Firefox and Internet Explorer, the Analytics reports would track this activity under two unique visitors. Similarly if the same browser were used by two different visitors, but with a separate computer account for each, the activity would be recorded under two unique visitor IDs. On the other hand, if the browser happens to be used by two different people sharing the same computer account, one unique visitor ID is recorded, even though two unique individuals accessed the site."*

This means that upon each view at [www.skatteetaten.no](http://www.skatteetaten.no) via a specific web browser, the \_\_utma cookie will issue a unique identification number. Thus, the cookie will allow the Directorate of Taxes to recognise the same visitor<sup>14</sup> upon subsequent visits until the user actively deletes the cookie from the computer.

## **6 Findings and discrepancies**

### **6.1 Introduction**

This is a review of the provisions of the Personal Data Act of relevance for this report in light of the factual conditions in this case. These conditions are addressed partially above and partially below together with the assessments of the Data Protection Authority.

### **6.2 Applicability of the Personal Data Act – Section 3 of the Act, cf. Section 2**

The Personal Data Act applies to processing of personal data wholly or partly by automatic means.<sup>15</sup>

The term "*personal data*" is defined in Section 2 no. 1 of the Personal Data Act as:

*"any information and assessments that may be linked to a natural person"*

As described above in Section 5.2, use of Google Analytics entails processing of the IP addresses of the visitors to the website [www.skatteetaten.no](http://www.skatteetaten.no), or to be more specific, the IP addresses of the hardware used by the visitors in connection with such visits.

The European Court of Justice has ruled that IP addresses must be regarded as personal data pursuant to Directive 95/46/EC, the so-called Data Protection Directive.<sup>16</sup> As the Norwegian Personal

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<sup>14</sup> In reality the individual computer and web browser.

<sup>15</sup> Cf. Section 3, first subsection, litterae a of the Act.

Data Act incorporates the Data Protection Directive into Norwegian law, the European Court of Justice's understanding will be decisive for interpretation of the Norwegian regulations as well.<sup>17</sup>

As a consequence, this understanding must also be used as a basis for application of the provisions of the Norwegian Personal Data Act.<sup>18</sup>

Accordingly, all such processing – as defined in Section 2 no. 2 of the Personal Data Act – of IP addresses must comply with the requirements stipulated in the Personal Data Act. The relevant processing actions are evaluated below in light of the requirements stipulated in the Personal Data Act.

### 6.3 Processing of IP addresses – legal requirements

Several basic requirements stipulated in the Personal Data Act must be fulfilled before processing will be regarded as processing of personal data. The basic requirements are stipulated in Section 11, first subsection, literae a to e of the Act. All basic requirements must be fulfilled at the same time.

The different processing methods – collection, registration and storage – must be evaluated separately. On the basis of the available information, it may prove difficult to make a clear distinction between the different data processing actions. In reality, the various processing actions will occur more or less at the same time. Based on this, it may seem appropriate to evaluate all processing actions as one.

The Data Protection Authority is of the opinion, however, that the Personal Data Act, in light of its legislative history, for example, stipulates separate evaluation of each individual processing action.<sup>19</sup> And regardless of whether the processing actions may occur at the same time, such an approach will be consistent with the logical *sequence* of the processing actions, as collection logically will occur before storage, etc.

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<sup>16</sup> References is made, for example, to case C-70/10 Scarlet Extended SA: *"Those addresses are protected personal data because they allow those users to be precisely identified"* (Premise 51).

<sup>17</sup> On several occasions, the Privacy Appeals Board has also assumed that an IP address constitutes personal data within the context of the Personal Data Act, for example in the Board's ruling PVN-2009-14.

<sup>18</sup> Whether or not an IP address is to be considered personal data will depend on whether the information may be linked to a specific individual. This will not always be possible, see for example NOU 2009:1 "Individ og integritet" (Individual and integrity) on the linking criteria in Section 4.5.3.2, with references. See also the Article 29 Data Protection Working Party's Opinion no. 4/2007 regarding the term personal data (WP 136), page 17, where it is stated *"[...] unless the Internet Service Provider is in a position to distinguish with absolute certainty that the data correspond to users that cannot be identified, it will have to treat all IP information as personal data, to be on the safe side"*. The opinion is available at [http://ec.europa.eu/justice/data-protection/article29/documentation/index\\_en.htm](http://ec.europa.eu/justice/data-protection/article29/documentation/index_en.htm)

<sup>19</sup> Odelsting Proposition No.. 92 (1998-1999), page 108: *"The assessment of whether the necessity requirement has been met may differ depending on what type of processing is involved. Depending on the circumstances, collection of the information may be necessary, but disclosure will not be."*

In the following, the Data Protection Authority will review the relevant processing actions in light of the basic requirements stipulated in Section 11 of the Personal Data Act. It is natural to start with collection of the information, as this processing will be the first to occur, at least on a logical timeline.

#### **6.4 Collection of the visitors' IP addresses**

As described in Section 5.2 of the report, the visitors' IP addresses are collected by the Directorate of Taxes, cf. step 1. This exchange of information is a precondition for the visitors obtaining access to the information published on Directorate of Taxes' website.

The IP address is subsequently sent<sup>20</sup> directly to Google, cf. steps 2 and 3. This flow of information is part of the functionality of Google Analytics. This processing must also be regarded as collection. As it has been determined that the controller responsibility rests with the Directorate of Taxes, the Directorate of Taxes is fully responsible for ensuring that this collection complies with the statutory requirements.

This means that there are two information flows in this case which serve two different processing purposes. First, there is a basic *communication purpose*, as described in step 1 in Section 5.2 of the report. The second purpose is *statistical and analytical*, as represented by steps 2 and 3 in the same section of the report.

##### **6.4.1 Legal basis is a statutory requirement for collection of personal data**

The first fundamental criterion for collection of personal data follows from Section 11, first subsection, literae a of the Personal Data Act. This provision refers to Section 8 of the Act, where it is stipulated that personal data may only be processed if there is a legal basis for such processing. As mentioned above, collection is just one of several different processing methods, cf. Section 2 no. 2 of the Act.

In Section 8 there are several different alternatives which may be used as the legal basis. The first alternatives are consent and statutory authority. Consent has not been invoked as the legal basis for collection of the IP addresses in this case. Statutory authority has also not been invoked, and the Data Protection Authority is not aware of the existence of any such statutory authority.

In Section 8 there is also a list of a range of alternative reasons why such processing may be necessary. Of these, there is one reason which may be relevant in this case, namely literae f:

*"Personal data may only be processed if [...] the processing is necessary in order [...] to enable the controller or third parties to whom the data are disclosed to protect a legitimate interest, except where such interest is overridden by the interests of the data subject".*

Two preconditions are stipulated in this provision, and both must be fulfilled at the same time:

- The first is that the interests of the controller must *override* the interests of the data subject<sup>21</sup>

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<sup>20</sup> Also in this case, the operations take place not necessarily with any significant time delay between them, but step 1 is a logical precondition for steps 2 and 3.

<sup>21</sup> The interests of third parties to whom the information is disclosed may justify processing of personal data pursuant to this provision, but no such interests have been indicated or identified in this case.



- The second is that the processing must be *necessary* in order to protect this interest

Thus, the issue to be resolved by the Data Protection Authority is whether or not the Directorate of Taxes – pursuant to Section 8, literae f of the Personal Data Act – may collect the IP addresses of the visitors to the Directorate of Taxes' website for the purposes described above in Section 6.4 of the report.

#### **6.4.2 The stated processing purposes**

It is stated on [www.skatteetaten.no](http://www.skatteetaten.no) that the IP addresses of the visitors are registered “[in] accordance with normal practice on the Internet”. By this, the Data Protection Authority assumes that the Directorate of Taxes refers to the collection described under step 1 in Section 5.2 of the report, as collection of IP addresses for statistical and analysis purposes hardly can be said to be consistent with “normal practice on the Internet”.

The Directorate has stated that surveys on the use of the website have indicated that the website is considered not easily accessible and difficult to navigate. Collection of IP addresses using Google Analytics contributes information on the behaviour of the visitors on the website, which may prove useful, for example, by facilitating a more user-friendly website.

In Google's terms and conditions for use of Google Analytics, however, it is stated that IP addresses are collected for the following purposes:<sup>22</sup>

- “evaluating your use of the website”
- “compiling reports on website activity for website operators”
- “providing other services relating to website activity and internet usage”

#### **6.4.3 Consideration**

There is no doubt that communication of IP addresses is a fundamental precondition for exchange of information on the Internet.<sup>23</sup> In the opinion of the Data Protection Authority, such collection as is described under the above step 1 in Section 5.2 of the report is not contrary to the general criteria stipulated in Section 11 of the Personal Data Act.

Thus, the below assessments do not address this flow of information in any way or manner. It is emphasised that the assessments below only address the processing of IP addresses by the Directorate of Taxes using Google Analytics, in other words the part of the flow of information which is described in steps 2 and 3 in Section 5.2 of the report.

##### **6.4.3.1 Weighing of interests**

The weighing of interests addressed in Section 8 literae f is one of two preconditions that must be fulfilled in order to allow collection of IP addresses, cf. Section 6.4.1 of the report.

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<sup>22</sup> The purposes are quoted directly from the document “Terms of Service for Google Analytics”, submitted by the Directorate of Taxes.

<sup>23</sup> See for example [no.wikipedia.org/wiki/Ip-adresse](http://no.wikipedia.org/wiki/Ip-adresse)

The Directorate of Taxes has stated that it has such an interest in collection of the IP addresses, and this interest may be described by reference to the stated analytical purposes, see Section 6.4.2 above.

On the other hand, however, the interest of the visitors is that their movement patterns and communication on the Internet not be traced or mapped. This viewpoint is based on Article 8 of the EHR.<sup>24</sup> This provision establishes that everyone has the right to respect for his private life and his correspondence. This interest is also expressed in the Data Protection Directive, which describes the right to privacy as a fundamental right.<sup>25</sup>

The interest is also reflected in the Personal Data Act, for example in the form of the basic requirement stipulated in Section 11, first subsection, literae d. It is stated in this provision that personal data which are processed must be *relevant* in relation to the purpose of the processing – a purpose which must be objectively justified by the activities of the controller.<sup>26</sup>

It is stated that only anonymised IP addresses are used for the processing purposes indicated by the Directorate of Taxes. In the opinion of the Data Protection Authority, the fact that the information is anonymised, and that only anonymised IP addresses are used for calculation of statistics and the analyses, will be of significance for the outcome of the weighing of interests. The reason for this is that anonymisation reduces the risk of the above-mentioned tracking and mapping.

Based on this, the Data Protection Authority finds that the weighing of interests is in favour of the Directorate of Taxes

#### 6.4.3.2 Necessity requirement

It is concluded in the above that the first precondition of Section 8, literae f of the Personal Data Act has been fulfilled. In addition to the interests being weighed in favour of the controller, the *necessity criterion* must also be fulfilled, as both of these two requirements must be fulfilled at the same time. In this case, this entails that the Directorate of Taxes must be able to demonstrate that it is necessary to collect IP addresses to achieve the purposes indicated above. It is clear that collection of complete IP addresses takes place; and that the anonymisation of the last part of the IP addresses takes place sometime – at least logically – after the collection takes place.

Collection of complete IP addresses when only anonymised IP addresses are used in the calculation basis, may appear to be a paradox, but the Data Protection Authority is of the opinion, however, that the necessity criterion must be regarded as being fulfilled in this case. The reason for this is that the entire IP addresses must first be collected before anonymisation can take place.

#### 6.4.4 Conclusion

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<sup>24</sup> The European Convention on Human Rights, incorporated in Norwegian law through the Act of 21 May 1999 No. 30 relating to strengthening the status of human rights in Norwegian law (the Human Rights Act).

<sup>25</sup> Article 1 of Directive 95/46/EC.

<sup>26</sup> See also "Eit informasjonssamfunn for alle" (An information society for everyone), Storting White Paper No. 17 (2006-2007), Section 8.3.3, "Retten til å være anonym" (The right to be anonymous).<sup>27</sup>  
[www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/](http://www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/).

The Data Protection Authority finds that the two conditions stipulated in Section 8, literae f of the Personal Data Act have been fulfilled. This entails that the Directorate of Taxes may collect complete IP addresses to protect the above-mentioned interests, which correspond to the statistical and analytical purposes described above.

In other words, collection of complete IP addresses using Google Analytics are in agreement with the conditions stipulated in the Personal Data Act.

### **6.5 Prohibition against storing longer than is necessary**

It follows from Section 11, first subsection, literae e of the Personal Data Act that collected and registered personal data must not be stored longer than is necessary for the purpose of the processing. This is also repeated in Section 28 of the Act. In this provision it is added that personal data shall be erased if the necessity criterion is not fulfilled.

It has been determined that the collected IP addresses are anonymised after they are received by Google in the United States. Such anonymisation may have the same effect as erasing the data. It is not possible, however, to establish whether or not the information is stored in an identifiable format longer than what is necessary to fulfil the relevant processing purposes. The Directorate of Taxes has requested additional information on the exact timing of the anonymisation process, but there has been no reply to the request.

As the party with the controller responsibility, the Directorate of Taxes is responsible for ensuring that the anonymisation takes place as soon as the statistical purpose has been achieved, in order for the information to be regarded as erased and the requirements stipulated in Sections 11 and 28 of the Act complied with. According to Section 14 of the Personal Data Act, the controller is obliged to document this.

### **6.6 Prohibition against processing for other purposes**

In the Directorate of Taxes' information on protection of privacy<sup>27</sup> it is stated that the *"[information received is handled in accordance with Google's guidelines for protection of privacy]"*. It is also stated that Google may use information collected via Google Analytics for *"providing other services relating to website activity and internet usage"*.<sup>28</sup>

It is stipulated in Section 11, first subsection, literae c of the Personal Data Act that personal data cannot be used subsequently for purposes that are incompatible with the original purpose of the collection, without the consent of the data subject.

Google states that the collected information may be used for *"providing other services relating to [...] internet usage"*, and that this is one of the purposes for collecting the IP-addresses. It is very uncertain what this entails. In the opinion of the Data Protection Authority, this may conceivably comprise horizontal tracking of internet users and marketing on the basis of personal profiles, just to mention a few potential uses. If so, this practice will not be compatible with the limitations regarding purpose stipulated in the Personal Data Act.

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<sup>27</sup> [www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/](http://www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/).

<sup>28</sup> See Section 6.4.2 of the report.

If Google, in its capacity as the processor on behalf of the Directorate of Taxes, uses the collected information to provide *"other services relating to [...] internet usage"*, and this expression comprises the practices described above, the Directorate of Taxes will in principle be liable for any breaches of Section 11, first subsection, literae c of the Personal Data Act.

#### **6.7 Does the Directorate of Taxes *disclose* personal data to Google?**

Google's guidelines for protection of privacy were changed in March of this year. The French Commission on Information Technology and Liberties (CNIL) has expressed concern that Google's new guidelines are too general and vague.<sup>29</sup> The Commission also refers to the fact that *"Google claims publicly that it will combine data across services"*, and that this *"raises fears about Google's actual practices"*. In other words, it appears that Google wants to process collected personal data for its own purposes.

If so, Google can no longer be regarded as the Directorate of Taxes' processor. Google will instead assume an independent controller responsibility. This presupposes that the information must be regarded as being disclosed to Google by the Directorate of Taxes. Such disclosure constitutes one of the processing categories defined in Section 2 no. 2 of the Personal Data Act. As stated previously, all such processing requires a legal basis in addition to compliance with the other basic requirements stipulated in Section 11 of the Act.

The Data Protection Authority cannot see that there is a legal basis for such disclosure, unless the data subject's informed consent has been obtained in advance. As the party with the controller responsibility, it will be the legal responsibility of the Directorate of Taxes to demonstrate that there is a basis for such processing.

#### **6.8 On information cookies**

The Directorate of Taxes has stated that it uses information cookies on [www.skatteetaten.no](http://www.skatteetaten.no) and that the purpose is to analyse the general usage pattern on the website.<sup>30</sup> The cookies have been described above, in Section 5.3 of the report.

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<sup>29</sup> CNIL's letter to Google Inc. dated 27 February 2012.

<sup>30</sup> [www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/](http://www.skatteetaten.no/no/Alt-om/personvern-pa-skatteetaten-no/)

Reference is made to Article 2 (5) of Directive 2009/136/EC where it is stipulated that Article 5 (3) of Directive 2002/58/EC is amended.<sup>31</sup> The wording of the new Article 5 (3) is as follows:

*"Member States shall ensure that the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia, about the purposes of the processing. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service."*

The amendment introduces as a general rule that consent must be obtained from the data subject when information cookies are used. Such consent must furthermore comply with the information requirements that follow from Directive 95/46/EC, cf. Section 2, no. 7 of the Personal Data Act, cf. Section 19.

As shown in the provision quoted above, obtaining consent is not necessary if one of the following criteria is fulfilled:

- If the cookie is used for the sole purpose of transmitting communication via an electronic communications network
- If the cookie is strictly necessary in order for the provider of an information society service explicitly requested by the user to provide the service

None of these exceptions are applicable in this case. Firstly, the \_\_utma cookie is not necessary to carry out the operation described under step 1 in Section 5.2 of the report. Secondly, it is hardly possible to say that the user has requested any services from Google Analytics – the user has accessed a service provided by the Directorate of Taxes.<sup>32</sup>

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<sup>31</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector. Article 5 (3) of Directive 2002/58/EC corresponds to Section 7-3 of the Regulations of 16 February 2004 No. 401 relating to electronic communications networks and electronic communications services, which has the following wording: *"Electronic communications networks cannot be used for the storage of information on the user's communications equipment or to obtain access to such information unless the user has been informed by the controller in accordance with the Personal Data Act, including information on the purpose of the processing, and has been given an opportunity to object to the processing. However, this is not an obstacle to technical storage or access to information:*

- 1. exclusively for the purpose of transmitting or facilitating the transmission of communications on an electronic communications network*
- 2. which is necessary to provide an information society service at the user's expressed request."*

<sup>32</sup>

The Article 29 Data Protection Working Party has arrived at the same conclusion regarding the Analytics cookie in its "Opinion 4/2012 on Cookie Consent Exemption":

*"While they are often considered as a "strictly necessary" tool for website operators, they are not strictly necessary to provide a functionality explicitly requested by the user (or subscriber). In fact, the user can access all the functionalities provided by the website when such cookies are disabled. As a consequence, these cookies do not fall under the exemption defined in CRITERION A or B."*<sup>33</sup>

However, it does not appear that this amendment of Directive 2002/58/EC has been incorporated in Norwegian law, in spite of the implementation deadline for the EU member states being set as 25 May 2011, and there is no doubt that the directive is relevant for the EEA Area. Reference is made to the fact that Section 7-3 of the Electronic Communications Regulations only provides the user with a right to *object* to the processing, cf. the wording of Article 5 (3) of Directive 2002/58/EC prior to the amendment in Directive 2009/136/EU. The Data Protection Authority does assume, however, that this provision will be incorporated in the near future. Based on this, the Directorate of Taxes is made aware of this now.

## **6.9 Obligation to provide information when data is collected under the Personal Data Act**

It follows from Section 19 of the Personal Data Act that when personal data is collected from the data subject himself, the controller shall on his own initiative first inform the data subject of:

- the name and address of the controller and of his representative, if any
- the purpose of the processing
- whether the data will be disclosed and if so, the identity of the recipient
- the fact that the provision of data is voluntary, and
- any other circumstances that will enable the data subject to exercise his rights pursuant to this Act in the best possible way, such as information on the right to demand access to data, cf. Section 18, and the right to demand that data be rectified, cf. Sections 27 and 28

As mentioned in Section 5.2 of the report, somewhat contrary information is provided to the users, for example as regards anonymisation of the IP addresses. In the opinion of the Data Protection Authority, this may be contrary to Section 19 of the Personal Data Act. Other unresolved issues, such as those addressed in Section 6.7 of the report, may also entail a breach of the obligation to provide information as stipulated in Section 19.

## **6.10 Internal control provisions of the Personal Data Act**

According to Section 14 of the Personal Data Act, the controller shall establish and maintain such planned and systematic measures as are necessary to fulfil the requirements laid down in or pursuant to this Act. The controller must also document the measures.

The documentation shall be accessible to the employees of the controller and of the processor as well as to the Data Protection Authority upon request.

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<sup>33</sup> "Criterion" A and B corresponds to the two bullet point criteria above.

## **6.11 Information security**

### In general on the statutory requirements

According to Section 14 of the Personal Data Act, the Directorate of Taxes shall by means of planned, systematic measures ensure satisfactory data security with regard to confidentiality, integrity and accessibility in connection with the processing of personal data. The measures must be documented. The requirements related to information security are addressed in further detail in Chapter 2 of the (Norwegian) Personal Data Regulations.

### **6.11.1 Risk assessment**

#### Legal basis

According to Section 2-4 of the Personal Data Regulations, an overview shall be maintained of the kinds of personal data that are processed. Criteria shall be established for acceptable risk associated with the processing of personal data. A risk assessment shall be carried out by the controller based on this in order to determine the probability and consequences of breaches of security. A new risk assessment shall be carried out in the event of changes of significance for data security. The result of the risk assessment shall be compared with the established criteria for acceptable risk. The result of the risk assessment shall be documented.

#### Factual conditions

It was stated that the Directorate of Taxes had carried out a risk assessment before it started to use Google Analytics. The risk assessment focused on risks associated with personal data in connection with processing of IP addresses and use of cookies. Measures were introduced to anonymise the IP addresses before they are stored on a server at Google.<sup>34</sup>

#### Conclusion

It was stated and verified that the Directorate of Taxes had satisfactory procedures and had carried out a risk assessment and external penetration test. The Data Protection Authority did, however, point out the importance of carrying out risk assessments in pursuance of Section 2-11 on confidentiality, Section 2-12 on accessibility, Section 2-13 on integrity and Section 2-14 on security measures regarding continued use of analysis tools, processing of IP addresses and use of cookies by the Directorate of Taxes.

## **6.12 Handling of discrepancies/security breaches**

### Legal basis

It follows from Section 2-6 of the Personal Data Regulations that the Directorate of Taxes must have procedures for handling of discrepancies. The results of discrepancy processing shall be documented. According to Section 2-8 of the Personal Data Regulations, the staff members shall have the knowledge necessary to use the information system in accordance with the routines that have been established. Thus, it is a requirement that these procedures must be implemented in the Directorate of Taxes.

In cases involving discrepancies due to identified unauthorised disclosure of personal data where maintaining confidentiality is a necessity, the Data Protection Authority must be notified of the result.

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<sup>34</sup> AnonymizeIP is a function which deletes the last octet of an IP address before it is stored at Google. See Tracing Code at <http://code.google.com>

#### Factual conditions

The Directorate of Taxes stated that it had experienced a discrepancy linked to the use of Google Analytics. The discrepancy was identified in connection with the Directorate of Taxes' use of Google Analytics in connection with registration of the traffic from visitors using mobile units. The discrepancy is due to a lack of anonymisation of the users' IP addresses before the information is stored at Google Analytics.

See also chapter 6 of the report on processing of IP addresses via Google Analytics on [www.skatteetaten.no](http://www.skatteetaten.no)

#### Conclusion

It was stated and verified that the Directorate of Taxes has satisfactory procedures and follow-up of measures for discrepancies in connection with Google Analytics.

### **6.13 Access control**

#### Legal basis

It follows from Section 13 of the Personal Data Act and Sections 2-11 through 2-14 of the Personal Data Regulations that the controller must ensure that the personal data are not accessible for any unauthorised parties.

#### Access to Google Analytics

The Directorate of Taxes stated that the Google Analytics reports do not contain any information which may be used to identify the users of the website [www.skatteetaten.no](http://www.skatteetaten.no). The submitted documentation shows that there are eight users, and that six of these have been assigned administrator rights for the Google Analytics reports.

#### Access to HTML codes for skattetaten.no

It was stated that no one in the Directorate of Taxes has access to the HTML code for [skatteetaten.no](http://skatteetaten.no). Administration of the website [skatteetaten.no](http://skatteetaten.no) has been assigned to the Directorate of Taxes' operator Creuna.

#### Conclusion

The Data Protection Authority has no comments regarding the Directorate of Taxes' access to the analysis tool Google Analytics.