Google Balks at Turning Over Private Internet Data to Regulators

By KEVIN J. O'BRIEN

BERLIN — Google has balked at requests from regulators to surrender Internet data and fragments of e-mail messages that it collected from unsecured home wireless networks, saying it needed time to resolve legal issues.

In Germany, Google said it was not able to fully comply with the Hamburg data protection supervisor’s deadline of Thursday to hand over data the company had collected — inadvertently, it said — while roving cars were compiling its Street View photo map archive.

The company implied that German privacy laws were preventing it from turning over the information, even to a government agency.

“As granting access to payload data creates legal challenges in Germany, which we need to review, we are continuing to discuss the appropriate legal and logistical process for making the data available,” Peter Barron, a Google spokesman in London, said in a statement. “We hope, given more time, to be able to resolve this difficult issue.”

The Hamburg data protection supervisor, Johannes Caspar, expressed his disappointment.

While prosecutors in Hamburg, where Google has its German headquarters, have opened a criminal investigation into the issue, Mr. Caspar said the state prosecutor, Lutz von Selle, had assured him that complying with the request to hand over the data would not cause additional legal problems for Google.

A refusal to comply with the privacy agency’s requests for information could result in a fine of up to 50,000 euros ($61,000), though Mr. Caspar declined to say whether he would immediately push for such a sanction.

“We will have to show them our weapons, which are not very heavy in this case,” he said.
Mr. Caspar said Google had cooperated partly with his office, providing “relevant answers” about how its Street View driving operations had been organized, among other things. The company also agreed to show investigators the software that was used to gather the data.

“We will only believe what we see,” Mr. Caspar said.

Meanwhile, the privacy commissioner in Hong Kong, Roderick B. Woo, threatened unspecified sanctions after Google did not respond to his request to inspect data collected in the territory by the roving cars. Mr. Woo said Google had ignored a deadline on Monday to turn over the information.

“I am dismayed by Google’s apparent lack of sincerity in its handling of this matter,” Mr. Woo said in a statement. “I do not see that Google is taking the matter seriously enough. Unless some remedial measures are taken by Google promptly, I shall have to consider escalating the situation and resort to more assertive action.”

A Google representative in Hong Kong could not be reached on Thursday for comment.

The company has said that its cars collected 600 gigabytes of “fragmentary data” from unsecured Wi-Fi networks in 33 countries and Hong Kong.

It has declined to describe the data in more detail and says it was gathered inadvertently because of a programming error.

Although the fines and administrative sanctions in privacy cases tend to be limited, one privacy expert said Google’s lack of compliance with regulators’ requests could damage its reputation.

“Google’s refusal to hand over the data will be seen as a declaration of war by European regulators,” said Simon Davies, the director of Privacy International, a London organization representing data protection groups in 40 countries. “This is about sovereignty and a country’s right to determine on its citizens’ behalf what is right and what is wrong.”

Google, based in Mountain View, Calif., has offered to destroy the data but has not allowed regulators to see and verify what it collected. Google has destroyed data collected in Denmark, Ireland and Austria at the request of local regulators.

But eight other European countries — Belgium, Britain, the Czech Republic, France, Germany, Italy, Spain and Switzerland — have asked Google to retain data collected in those nations, which may be used as evidence in future legal proceedings.

In the United States, the chairman of the Federal Trade Commission, Jon Leibowitz, told
Congress last week that his agency would look into Google’s actions.

Some have questioned Google’s assertion that it gathered the data inadvertently.

“If the company is fighting this so hard, it suggests there is more to this than meets the eye,” said Mr. Davies, of Privacy International. “The real question is: What was Google collecting from unwitting individuals and why? So far, nobody really knows.”

One privacy lawyer said Google might be wagering that paying fines and enduring negative publicity was preferable to giving regulators insight into its data collection practices.

“Remember that Microsoft’s reputation took a hit for a decade in Europe while it faced its antitrust suit here,” said Ulrich Börger, a privacy lawyer in Hamburg at Latham & Watkins, an American law firm. “But at the end of the day, the negative publicity did not affect the company’s business bottom line in Europe.”

Regulators and prosecutors may be hard-pressed to compel Google to hand over hard drives that are not being kept in their countries.

“Our understanding is that the data collected, including Wi-Fi data, is held overseas in the United States,” said Karen Curtis, the Australian privacy commissioner.

Prosecutors in Hamburg may also have difficulty bringing charges because Germany has no legal concept of corporate criminal liability. Hamburg prosecutors would have to prove that individuals working for Google deliberately broke wiretapping laws.

Proving that the driver of a Street View recording vehicle had such knowledge and intent may be difficult, Mr. Börger said. “This is not going to be an easy prosecution.”

_Eric Pfanner contributed reporting from Paris._