



Privacy International

Mr Richard Thomas
Information Commissioner
The Office of the Information Commissioner,
Water Lane,
Wycliffe House,
Wilmslow, Cheshire SK9 5AF
UNITED KINGDOM

Monday, 22 October 2007

6-8 Amwell Street
London
EC1R 1UQ, GB
gus@privacy.org
<http://www.privacyinternational.org>

Dear Mr. Thomas,

**Complaint: DNA acquisition by US-based social networking site
Ancestry.com**

I am writing with regard to a new service recently established by the leading online genealogical site Ancestry.com that offers to test and publicise the DNA of its customers. This commercial service has been provided to assist genealogical tracing through familial lines.

On the face of the circumstances that we have assessed, it appears to us that the practice substantially violates UK Data Protection law and we request that your office institutes an investigation without delay. We also ask that you intervene on behalf of European nationals to seek the immediate suspension of the site's DNA project pending legal review.

We understand that there are many people who for a variety of reasons are anxious to trace their ancestry. However there are a number of troubling questions of law and practice that Privacy International believes must be clarified before people can have confidence in this new service. Until these questions have been satisfactorily answered, we believe the service presents a number of substantial dangers for customers.

Privacy International believes that the acquisition of DNA carries with it the most profound implications for privacy and security, and any such arrangement must be accompanied by stringent protections. It is for this reason that we have taken the decision to lodge this complaint.

We believe, based on the Article 29 paper "Working document on determining the international application of EU data protection law to personal data processing on the Internet by non-EU based web sites" supported by other sources, that our complaint is covered by applicable EU law.

Background to the company

Ancestry.com was created and launched in 1997 by a Utah based private company “The Generations Network”, and now claims fifteen million users. Other Web sites owned by The Generations Network include MyFamily.com, Rootsweb.com and Genealogy.com. The company is based in Provo, Utah.

In 2007, in return for a majority interest, The Generations Network received \$300 million from Spectrum Equity Investors, a company specializing in the online and communications markets. This funding will allow the company to extend its operations worldwide.

Currently, Ancestry.com operates a number of European sites including the UK (Ancestry.co.uk), Italy (Ancestry.it), Germany (Ancestry.de) and France (Ancestry.fr).

Substance of the complaint

1) Data storage. The FAQ (Frequently Asked Questions) on Ancestry.com states: “Ancestry.com will provide complimentary storage of samples submitted for DNA testing (..)”. We interpret this as meaning that the Generations Network will maintain custody of the original genetic sample provided for testing. This raises two key questions:

- Will the samples and related data be stored indefinitely?
- Will ancestry.com or Ancestry.co.uk customers be given a right to opt-out of storage of their genetic material?

We can see no information on the Ancestry sites that resolves either of these questions. In our view, DNA information constitutes sensitive personal data and thus should at the very least be subject to explicit and informed consent by way of opt-in.

2) Third party use of data. The Generations Network has entered into a partnership agreement with Sorenson Genomics, a Salt Lake City based DNA testing facility owned by billionaire James LeVoy Sorensen, a prominent member of the Church of Jesus Christ of Latter Day Saints (the Mormon Church).(1) The Mormon Church has a long standing involvement in genealogical research and is said to house the largest genealogical archive in the world. Given that a number of cooperative arrangements have been established between the Generations Network, Ancestry.com and the genealogical operations of the Mormon Church (2) we feel it is important to determine the details of these agreements. What contractual relationship, if any, exists between Sorenson

Genomics, the Mormon Church and/or the Generations Network that might permit the transfer to the Church of DNA data and DNA samples?

The Ancestry.co.uk privacy policy is unclear on the issue of data transfer. While on the one hand it states “Under no circumstances will Ancestry share with any other party your password or other personal information it may acquire about children, family, etc.” it also advises “The personal, private information that is provided to Ancestry by individual members is not provided to unrelated third parties” (our emphasis). We believe the company should clarify this situation.

3) Lawful Access. The FAQ in the DNA section of Ancestry.com is evasive on the point of lawful access to genetic data and genetic material. In the section “If I choose to have my DNA tested, will my DNA information be safe from medical insurance companies, the government, etc?” the FAQ merely says “Ancestry.com will not share your testing results with other organizations without your consent. In addition, as with all user submitted content Ancestry.com gives you control over your privacy settings that determine whether your information is public or anonymous.” This statement skirts the obvious issue of access by security and law enforcement agencies or seizure by way of court order. However the privacy policy on the main ancestry.com site advises that disclosure may occur “as required by law”. We believe the FAQ should reflect the potential for access by authorities so that customers can make a more informed choice about whether to submit their DNA.

4) Impersonation. What protections have been put in place to ensure that a person’s DNA is not submitted without consent by a third party? (for example, a child or partner covertly obtaining a saliva sample and submitting it in the owner’s name).

The implications of discovery through impersonation are considerable. The Ancestry.com site discusses such aspects as paternity checking:

A common application of DNA testing is in determining the paternity of a child for custody or inheritance. Results of a DNA Ancestry test can definitively disprove a genetic relation. A large number of mismatches between two test results reflects that the two participants are not directly related. A 100% match, on the other hand, cannot be used as legal proof of paternity, but can serve as a strong indication.

5) Legal compliance. The Ancestry.co.uk privacy policy makes no mention of obligations under the EU Data Protection Directive and

related national laws regarding the export of sensitive personal data outside the European Economic Area. Nor are either Ancestry.com or The Generations Network listed as certified under the Department of Commerce "Safe Harbor" program for export of personal data from the EU. This raises the real possibility of breach of EU and national law.

6) Ownership and control of the data. In its privacy policy, ancestry.com describes genetic and genealogical data held by it as a transferable asset. Does this mean that ancestry.com regards itself as the "owner" of a person's DNA? We believe that the question of ownership and control sits at the heart of many issues relating to the legality and the operation of the service.

7) Communications. People submitting DNA samples to ancestry.com are given the option of communicating with anyone who has been identified as a genetic match. However, have people who are potential matches also been given the right not to receive such communications?

According to the Ancestry.com site:

As the DNA Ancestry database grows, we will automatically compare your result against each new entry. If a close match is found, you will receive an e-mail with a link to a page that describes how your two test results match. You can now begin communicating with your genetic cousin using Ancestry.com's Connection Service as the first step towards comparing the genealogies of your two families.

DNA Ancestry protects your privacy by allowing you to make your DNA results anonymous. Doing so hides your Ancestry.com username, but allows your DNA results to still be matched with others in the DNA Ancestry database. So even if you have chosen to keep your username hidden, you can still discover genetic cousins and, if the match is close enough, contact them safely and anonymously.

Your privacy is also protected by using Ancestry.com's Connection Service to contact other DNA participants. The Connection Service allows you to send an e-mail to a potential genetic relative without revealing your own e-mail address. Instead, the message is sent through Ancestry.com and the system transfers the message to your e-mail address without revealing your actual address. Replies can also be made through the Connection Service until you feel you wish to make direct e-mail contact with the other party.

While these measures provide choice and facilities for the person wanting to communicate with matched parties, they provide little or no choice for those who are recipients of the communications.

We hope you are able to resolve these matters swiftly to ensure that ancestry.com customers enjoy the benefits of strong protection of their sensitive data.

Yours sincerely,

Simon Davies
Director,
Privacy International

References

(1) See interview with Sorenson at <http://deseretnews.com/dn/view/0,1249,685193155,00.html> Salt Lake Tribune, July 15, 2007

(2) For a discussion of such arrangements see "Online genealogy just got easier" The Salt Lake Tribune, May 22, 2007.