



## TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY (TMT)

# IN SEARCH OF THE PAST: DATA PROTECTION AND THE RIGHT TO BE FORGOTTEN ON THE INTERNET

## DECISION BY THE CJEU IMPOSES NEW DUTIES ON INTERNET SEARCH ENGINES

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The case was heard by way of a preliminary ruling, a procedural mechanism which allows the courts of Member States, in the context of a dispute submitted to them, to ask the Court of Justice for a ruling on the interpretation of European Union law.

At issue in this case was the application of the rules of Directive 95/46/EC on the protection of personal data.

In 2010, a Spanish citizen Costeja González made a complaint to the Spanish Data Protection Agency (AEPD) against La Vanguardia Ediciones SL (publisher of a large circulation daily newspaper) and the companies Google Spain and Google Inc.

Costeja González alleged that, when anyone surfing the Internet inserted his name into the Google group's search engine, the list of results included links to pages of the daily newspaper La Vanguardia from 1998, which announced the sale of a property by public auction organised to cover Costeja González's social security debts.

The debt was paid in the meantime and the case was closed. However, Costeja González's name remained linked to these events as the news continued to be accessible by anyone who searched his name. Costeja González requested the removal of the news from the Internet.

The AEPD rejected the complaint against the newspaper as it found that the publisher had legally published the information in question. In contrast, the complaint against Google was upheld and the AEPD ordered it to take the necessary steps to remove the data from its search engine index and prevent further access to the same.

Google appealed seeking the annulment of the decision by the AEPD. Against this background, three fundamental questions were submitted to the Court of Justice of the European Union: (i) the scope of territorial application of the European Union data protection rules, (ii) the role and responsibility of internet search engines and (iii) the 'right to be forgotten', in the sense of whether an interested party may ask for some or all of the search results relating to him or her to be blocked in the internet search engine.

Whether or not there is a right to be forgotten is the subject of much discussion, both in Europe and in the United States of America, so the outcome of this court case was awaited with much interest.

On the question of territorial application, Google argued that it did not carry on any activity involving indexation or storage of information in Spain. Google Spain's object is to promote and sell advertising space, while indexation is carried out by Google Inc., based in the United States. Thus, the European Union rules on data protection would not apply to it.

However, the Court of Justice held that the legislation does not contain any explicit requirement that the data processing must be carried out by the branch or subsidiary of the company in the European Union, but only that it be carried out in the context of its activity. Therefore, as the processing of information is carried out in the context of the advertising and commercial activity of Google's branch or subsidiary in Spain, the activity is, indeed, subject to European Union legislation.

The second question follows on from this: is Google's internet search and indexation activity covered by the concept of «data processing»? Furthermore: is the search engine responsible for data processing?

The argument put forward by Google was that a search engine does not create content, but only indicates where pre-existing information made available on the Internet by third parties can be found. A tool to locate information available on the Internet does not imply an obligation to control the content of the websites it indicates.

The Court of Justice found that search engines can, by using technical mechanisms (exclusion codes and memory cache) block certain search results. Google already carries out this type of filtering in many countries by blocking sites that violate intellectual property rights.

A search engine operator connects, retrieves, registers, organises, stores, communicates and makes information (much of a personal) available to the public. Therefore, because it has technical mechanisms to filter the content of the search engine is, in fact, carrying on «data processing» activity.

This possibility makes the search engine responsible for removing results with links to pages that may reveal an unwanted encroachment into the private life of any use it.

In this respect, and in certain circumstances, the decision of the Court of Justice imposed a duty on search engines to control all and any personal content whose publication and indexation was no longer of interest to the holder of the data.

Following on from this conclusion is the third and final controversial point of the case: is the removal mandatory even if the content is lawful? The court answered «yes» to this question. The search engine operator is under an obligation to remove the links to other pages on the Internet that contain information about this person from the results of a search of the name of the person, even when the publication of the information is, in itself, lawful.

For the Court of Justice, the right to privacy must prevail over the economic interest of the search engine operator and the public's interest in accessing information. The only exception allowed by the judgement is in cases in which the role the person plays in public life justifies public interest in access to the information.

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This is a significant change in the way the role of search engines is seen. In the past, their responsibility was always limited to the duty to react to complaints about clearly illegal situations. What the judgement of the Court of Justice of the European Union now establishes is that, regardless of the impact of the information, there is a right on the part of the individual to request the suppression of personal indexation information on the Internet, even if that information was lawfully published and is true.

Besides the changes in the policies and procedures of search engine companies, the impact of this decision raises another important consideration. In the name of personal data protection, is it not limiting access to information that may be relevant or important?

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