

PRACTICAL IMPLEMENTATION OF THE RIGHT TO BE FORGOTTEN IN THE CONTEXT OF GOOGLE SPAIN DECISION

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ABSTRACT:

The concept of the right to be forgotten has arisen from desires of individuals to live their lives without being digitally stigmatized as a consequence of a particular action performed in the past. The right to be forgotten has been recently put into practice in the European Union by the decision of the Court of Justice of the European Union in *Google Spain v. AEPD and Mario Costeja González*. It holds that an internet search engine operator is responsible for the processing that it carries out regarding personal information which appears on web pages published by third parties. In this respect, it sets a milestone for EU data protection regarding search engines and, more generally, in the online world. The CJEU grants the possibility for data subjects to request search engines, under certain conditions, to de-list links appearing in the search results based on a person's name. In this article we take a closer look at the content of the aforementioned decision of the CJEU and provide also information as to how it is practically implemented by following the steps that have been made by European data regulation authorities and the search engines Google, Bing and Yahoo. We conclude that Google and Bing managed to implement the decision in practice by creating a webpage containing a form which an affected person can use to request the removal of a search result that is among the data protected by the directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data as interpreted by the CJEU in the given decision.

KEY WORDS:

European Union, Court of Justice of the European Union (CJEU), right to be forgotten, privacy, right to receive information, Google, Bing, Yahoo

Introduction

In theory, the right to be forgotten addresses an urgent problem in the digital age: it is very hard to escape your past on the Internet now that every photo, status update, and tweet lives forever in the cloud.¹

¹ ROSEN, J.: *The Right to Be Forgotten*. In 64 Stan. L. Rev. 88, 2012, February 13, 2012. [online]. [2014-07-23]. Available at: <<http://www.stanfordlawreview.org/sites/default/files/online/topics/64-SLRO-88.pdf>>

Personal data has become the currency on the Internet. It is collected, stored and used in an ever-increasing variety of ways by a countless amount of different users. Contemporary technology has made “little big brothers” out of all of us, producing a complex interaction between our different roles as data controllers and data subjects. In this “global village” where every piece of information can be remembered until eternity, the question of control over one’s “personal data” becomes more and more important. The idea of a ‘right to be forgotten’ has been pushed forward as an important materialization of this ‘control-right’.²

There has been quite a lively exchange of views in the professional discourse on this topic for several years, resulting in both impetuses and warnings of related risks.³ However, recently the ‘right to be forgotten’ has attracted international interest, particularly within the context of the European Union. In May 2014, a major jurisprudential development occurred. In its decision, *Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (C-131/12)*, the Court of Justice of the European Union has made a significant contribution to the debate concerning the right to be forgotten. It holds that an internet search engine operator is responsible for the processing that it carries out on personal information which appears on web pages published by third parties. In this respect, it sets a milestone for EU data protection regarding search engines and, more generally, in the online world. The CJEU grants the possibility for data subjects to request to search engines, under certain conditions, the de-listing of links appearing in the search results based on a person’s name. In this article we take a closer look at the content of the aforementioned decision of the CJEU and provide also information as to how it is practically implemented by following the steps that have been made by European data regulation authorities and the search engines Google, Bing and Yahoo.

The Case of Google Spain vs. AEPD and Mario Costeja González

Let us first take a closer look at the content of the aforementioned decision of the Court of Justice of the European Union, C-131/12.⁴ In 2010 Mario Costeja González, a Spanish national, lodged with the Agencia Española de Protección de Datos (Spanish Data Protection Agency, the AEPD) a complaint against La Vanguardia Ediciones SL (the publisher of a daily newspaper with a large circulation in Spain, particularly in Catalonia) and against Google Spain and Google Inc. Mr Costeja González contended that, when an internet user entered his name in the search engine of the Google group (‘Google Search’), the list of results would display links to two pages of La Vanguardia’s

newspaper, of January and March 1998. Those pages in particular contained an announcement for a real-estate auction organized following attachment proceedings for the recovery of social security debts owed by Mr Costeja González. With that complaint, Mr Costeja González requested, first, that La Vanguardia be required either to remove or alter the pages in question (so that the personal data relating to him no longer appeared) or to use certain tools made available by search engines in order to protect the data. Second, he requested that Google Spain or Google Inc. be required to remove or conceal the personal data relating to him so that the data no longer appeared in the search results and in the links to La Vanguardia. In this context, Mr Costeja González stated that the attachment proceedings concerning him had been fully resolved for a number of years and that reference to them was now entirely irrelevant. The AEPD rejected the complaint against La Vanguardia, taking the view that the information in question had been lawfully published by it. On the other hand, the complaint was upheld as regards Google Spain and Google Inc. The AEPD requested those two companies to take the necessary measures to withdraw the data from their index and to render access to the data impossible in the future. Google Spain and Google Inc. brought two actions before the Audiencia Nacional (National High Court, Spain), claiming that the AEPD’s decision should be annulled. It is in this context that the Spanish court referred a series of questions to the Court of Justice. In today’s judgment, the Court of Justice finds, first of all, that by searching automatically, constantly and systematically for information published on the internet, the operator of a search engine ‘collects’ data within the meaning of the directive. The Court considers, furthermore, that the operator, within the framework of its indexing programmes, ‘retrieves’, ‘records’ and ‘organizes’ the data in question, which it then ‘stores’ on its servers and, as the case may be, ‘discloses’ and ‘makes available’ to its users in the form of lists of results. Those operations, which are referred to expressly and unconditionally in the directive, must be classified as ‘processing’, regardless of the fact that the operator of the search engine carries them out without distinction in respect of information other than the personal data. The Court also points out that the operations referred to by the directive must be classified as processing even where they exclusively concern material that has already been published as it stands in the media. A general derogation from the application of the directive in such a case would have the consequence of largely depriving the directive of its effect. The Court further holds that the operator of the search engine is the ‘controller’ in respect of that processing, within the meaning of the directive, given that it is the operator which determines the purposes and means of the processing. The Court observes in this regard that, inasmuch as the activity of a search engine is additional to that of publishers of websites and is liable to affect significantly the fundamental rights to privacy and to the protection of personal data, the operator of the search engine must ensure, within the framework of its responsibilities, powers and capabilities, that its activity complies with the directive’s requirements. This is the only way that the guarantees laid down by the directive will be able to have full effect and that effective and complete protection of data subjects (in particular of their privacy) may actually be achieved. As regards the directive’s territorial scope, the Court observes that Google Spain is a subsidiary of Google Inc. on Spanish territory and, therefore, an ‘establishment’ within the meaning of the directive. The Court rejects the argument that the processing of personal data by Google Search is not carried out in the context of the activities of that establishment in Spain. The Court holds, in this regard, that where such data are processed for the purposes of a search engine operated by an undertaking which, although it has its seat in a non-member State, has an establishment in a Member State, the processing is carried out ‘in the context of the activities’ of that establishment, within the meaning of the directive, if the establishment is intended to promote and sell, in the Member State in question, advertising space offered by the search engine in order to make the service offered by the engine profitable. So far as the extent of the responsibility of the operator of the search engine is concerned, the Court holds that the operator is, in certain circumstances, obliged to remove links to web pages that are published by third parties and contain information relating to a person from the list of results displayed following a search made on the basis of that person’s name. The Court makes it clear that such an obligation may also exist in a case where that name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful. The Court points out in this context that processing of personal data carried out by such an operator enables any internet user, when he makes a search on the basis of an individual’s name, to obtain, through the list of results, a structured overview of the information relating to that individual on the internet. The Court observes, furthermore, that this information potentially concerns a vast number of aspects of his private life and that, without the search engine, the information could not have been interconnected or could have been only with great difficulty. Internet users may thereby establish a more or less detailed

2 AUSLOOS, J.: *The ‘Right to be Forgotten’—Worth remembering?* In *Computer Law & Security Review*, 2012, Vol. 28, No. 2, p. 143-144. On the other side the problem of restraining the information dissemination on the Internet is a much wider topic that must be viewed from different angles. For more see GABRIŠ, T., KOVÁR, L.: *Restriction of information dissemination on the Internet*. In *Communication Today*, 2013, Vol. 4, No. 2, p. 6-20.

3 E.g. APARICIO SALOM, J.: *A third party to whom data are disclosed: A third group among those processing data*. In *International Data Privacy Law*, 2014. [online]. [2014-07-23]. Available at: <<http://idpl.oxfordjournals.org/content/4/3/177.full.pdf+html>>; FAZLIOGLU, M.: *Forget me not: the clash of the right to be forgotten and freedom of expression on the Internet*. In *International Data Privacy Law*, 2013. [online]. [2014-07-23]. Available at: <<http://idpl.oxfordjournals.org/content/early/2013/05/26/idpl.ipt010.full.pdf+html>>; FRANTZIOU, E.: *Further Developments in the Right to be Forgotten: The European Court of Justice’s Judgment in Case C-131/12, Google Spain, SL, Google Inc v Agencia Española de Protección de Datos*. In *Human Rights Law Review*, 2014, Vol. 14, No. 4, p. 761-777; HERMSTRÜWER Y., DICKERT, S.: *Tearing the veil of privacy law: An experiment on chilling effects and the right to be forgotten*. Working Paper. Preprints of the Max Planck Institute for Research on Collective Goods, No. 2013/15. [online]. [2014-07-23]. Available at: <<https://www.econstor.eu/dspace/bitstream/10419/84983/1/757205445.pdf>>; IGLEZAKIS, I.: *The Right To Be Forgotten in the Google Spain Case (case C-131/12): A Clear Victory for Data Protection or an Obstacle for the Internet?* [online]. [2015-02-12]. Available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2472323>; KOKOTT, J., SOBOTTA, Ch.: *The distinction between privacy and data protection in the jurisprudence of the CJEU and the ECtHR*. In *International Data Privacy Law*, 2013, Vol. 3, No. 4, p. 222-228; KORENHOF, P., AUSLOOS, J., SZEKELY, I., AMBROSE, M., SARTOR, G., LEENES, R.: *Timing the Right to Be Forgotten. A study into “time” as a factor in deciding about retention or erasure of data*. Working paper. [online]. [2014-07-23]. Available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2436436>; MCGOLDRICK, D.: *Developments in the Right to be Forgotten*. In *Human Rights Law Review*, 2013, Vol. 13, No. 4, p. 761-776; PEIFER, K. N.: *Personal privacy rights in the 21st century: logic and challenges*. In *Journal of Intellectual Property Law & Practice*, 2014, Vol. 9, No. 3, p. 231-238; ROSEN, J.: *The Right to Be Forgotten*. In 64 *Stan. L. Rev.* 88, 2012, February 13, 2012. [online]. [2014-07-23]. Available at: <<http://www.stanfordlawreview.org/sites/default/files/online/topics/64-SLRO-88.pdf>>; STUART, A. H.: *Google Search Results: Buried if Not Forgotten*. In *North Carolina Journal of Law & Technology*, 2014, Vol. 15, No. 3, p. 463-517.

4 The decision is available at the address: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0131>>.

profile of the person searched against. Furthermore, the effect of the interference with the person's rights is heightened on account of the important role played by the internet and search engines in modern society, which render the information contained in such lists of results ubiquitous. In the light of its potential seriousness, such interference cannot, according to the Court, be justified by merely the economic interest which the operator of the engine has in the data processing. However, inasmuch as the removal of links from the list of results could, depending on the information at issue, have impact on the legitimate interest of internet users potentially interested in having access to that information, the Court holds that a fair balance should be sought in particular between that interest and the data subject's fundamental rights, in particular the right to privacy and the right to protection of personal data. The Court observes in this regard that, whilst it is true that the data subject's rights also override, as a general rule, the interest of internet users, this balance may however depend, in specific cases, on the nature of the information in question and its sensitivity for the data subject's private life and on the interest of the public in having that information, an interest which may vary, in particular, according to the role played by the data subject in public life. Finally, in response to the question whether the directive enables the data subject to request that links to web pages be removed from such a list of results on the grounds that he wishes the information appearing on those pages relating to him personally to be 'forgotten' after a certain time, the Court holds that, if it is found, following a request by the data subject, that the inclusion of those links in the list is, at this point in time, incompatible with the directive, the links and information in the list of results must be erased. The Court observes in this regard that even initially lawful processing of accurate data may, in the course of time, become incompatible with the directive where, having regard to all the circumstances of the case, the data appear to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed. The Court adds that, when appraising such a request made by the data subject in order to oppose the processing carried out by the operator of a search engine, it should in particular be examined whether the data subject has a right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results that is displayed following a search made on the basis of his name. If that is the case, the links to web pages containing that information must be removed from that list of results, unless there are particular reasons, such as the role played by the data subject in public life, justifying a preponderant interest of the public in having access to the information when such a search is made. The Court points out that the data subject may address such a request directly to the operator of the search engine (the controller) which must then duly examine its merits. Where the controller does not grant the request, the data subject may bring the matter before the supervisory authority or the judicial authority so that it carries out the necessary checks and orders the controller to take specific measures accordingly.

Practical Implementation of the Decision by European Data Protection Authorities

Six months after the decision, on the 26th of November 2014, the European Data Protection Authorities (hereinafter: DPAs) assembled in the Article 29 Working Party (WP29)⁵ have adopted guidelines on the implementation of the judgment of the CJ EU.⁶ The WP29 considers that in order to give full effect to the data subject's rights as defined in the Court's ruling, de-listing decisions must be implemented in such a way that they guarantee the effective and complete protection of data subjects' rights and that EU law cannot be circumvented.

⁵ The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The Article 29 Working Party is competent to examine any question covering the application of the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

⁶ See: *Guidelines on the Implementation of the European Union's Judgement on "Google Spain and Inc v. Agencia Espanola de Protección de Datos (AEPD) and Mario Costeja Gonzalez"*, [online]. [2015-02-12]. Available at: <http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf>.

Under EU law, everyone has a right to data protection. In this respect, DPAs will practically focus on claims where there is a clear link between the data subject and the EU, for instance where the data subject is a citizen or resident of an EU Member State. Search engines should not, as a general practice, inform the webmasters of the pages affected by removals of the fact that some web pages cannot be accessed from the search engine in response to a specific name-based query.

The Guidelines contain the list of common criteria which the data protection authorities shall apply to handle the complaints filed with their national offices following refusals of de-listing by search engines. The list contains 13 main criteria and should be seen as a flexible working tool to help DPAs during the decision-making processes. Criteria shall be applied on a case by case basis and in accordance with the relevant national legislations. No single criterion is, in itself, determinative. Each of them has to be read in the light of the principles established by the Court and in particular in the light of the interest of the general public in having access to the information. Here is the executive summary of the Guidelines:

1. Search engines as data controllers.

The ruling recognizes that search engine operators process personal data and qualify as data controllers within the meaning of Article 2 of Directive 95/46/EC. The processing of personal data carried out in the context of the activity of the search engine must be distinguished from, and is additional to that carried out by publishers of third-party websites.

2. A fair balance between fundamental rights and interests

In the terms of the CJ EU, "in the light of the potential seriousness of the impact of this processing on the fundamental rights to privacy and data protection, the rights of the data subject prevail, as a general rule, over the economic interest of the search engine and that of internet users to have access to the personal information through the search engine". However, a balance of the relevant rights and interests has to be made and the outcome may depend on the nature and sensitivity of the processed data and on the interest of the public in having access to that particular information. The interest of the public will be significantly greater if the data subject plays a role in public life.

3. Limited impact of de-listing on the access to information

In practice, the impact of the de-listing on individuals' rights to freedom of expression and access to information will prove to be very limited. When assessing the relevant circumstances, DPAs will systematically take into account the interest of the public in having access to the information. If the interest of the public overrides the rights of the data subject, de-listing will not be appropriate.

4. No information is deleted from the original source

The judgment states that the right only affects the results obtained from searches made on the basis of a person's name and does not require deletion of the link from the indexes of the search engine altogether. That is, the original information will still be accessible using other search terms, or by direct access to the publisher's original source.

5. No obligation on data subjects to contact the original website

Individuals are not obliged to contact the original website in order to exercise their rights towards the search engines. Data protection law applies to the activity of a search engine acting as a controller. Therefore, data subjects shall be able to exercise their rights in accordance with the provisions of Directive 95/46/EC and, more specifically, of the national laws that implement it.

6. Data subjects' entitlement to request de-listing

Under EU law, everyone has a right to data protection. In practice, DPAs will focus on claims where there is a clear link between the data subject and the EU, for instance where the data subject is a citizen or resident of an EU Member State.

7. Territorial effect of a de-listing decision

In order to give full effect to the data subject's rights as defined in the Court's ruling, de-listing decisions must be implemented in such a way that they guarantee the effective and complete protection of data subjects' rights and that EU law cannot be circumvented. In that sense, limiting de-listing to EU domains on the grounds that users tend to access search engines via their national domains cannot be considered a sufficient mean to satisfactorily guarantee the rights of data subjects according to the ruling. In practice, this means that in any case de-listing should also be effective on all relevant domains, including .com.

8. Information to the public on the de-listing of specific links

The practice of informing the users of search engines that the list of results to their queries is not complete as a consequence of the application of European data protection is based on no legal requirement under data protection rules. Such a practice would only be acceptable if the information is presented in such a way that users cannot, in any case, conclude that one particular individual has asked for de-listing of results concerning him or her.

9. Communication to website editors on the de-listing of specific links

Search engines should not as a general practice inform the webmasters of the pages affected by de-listing of the fact that some web pages cannot be accessed from the search engine in response to a specific name-based query. There is no legal basis for such routine communication under EU data protection law.

In some cases, search engines may want to contact the original editor in relation to particular request prior to any de-listing decision, in order to obtain additional information for the assessment of the circumstances surrounding that request.

Taking into account the important role that search engines play in the dissemination and accessibility of information posted on the Internet and the legitimate expectations that webmasters may have with regard to the indexing and presentation of information in response to users' queries, the Article 29 Working Party strongly encourages the search engines to provide the de-listing criteria they use, and to make more detailed statistics available.

Practical Implementation by Google

Before these Guidelines and just few days after the Court issued the decision, Google took steps in order to implement the imposed duties.⁷ When searching for a name, a notification of the fact that "some results may have been removed under data protection law in Europe" may appear at the end of the page. It is still not fully comprehensible why this notification appears with some names while it does not appear with others. One of the criteria (under the decision of the Court of Justice) based on which Google should distinguish between individual persons, is the role of a person in public life. However, it is a significantly subjective criterion.

A substantial step in implementing the decision by Google has been the creation of a webpage containing a form by means of which an affected person (or their authorised representative) can request the removal of a search result that is among the data protected by the directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data as interpreted by the Court of Justice in the given decision.

⁷ Shortly after the judgement was issued Eric Schmidt, the Executive Chairman of Google, expressed his views: "A simple way of understanding what happened here is that you have a collision between a right to be forgotten and a right to know. From Google's perspective that's a balance ... Google believes having looked at the decision, which is binding, that the balance that was struck was wrong." ORESKOVIC, A.: *Google gets take-down requests after European court ruling: source*. [online]. [2014-07-23]. Available at: <<http://www.reuters.com/article/2014/05/14/us-google-cu-idUSBREA4D0P820140514?>>.

Search removal request under data protection law in Europe

Background

A recent ruling by the Court of Justice of the European Union (C-131/12, 13 May 2014) found that certain people can ask search engines to remove specific results for queries that include their name, where the interests in those results appearing are outweighed by the person's privacy rights.

When you make such a request, we will balance the privacy rights of the individual with the public's interest to know and the right to distribute information. When evaluating your request, we will look at whether the results include outdated information about you, as well as whether there's a public interest in the information — for example, we may decline to remove certain information about financial scams, professional malpractice, criminal convictions, or public conduct of government officials.

You will need a digital copy of a form of identification to complete this form. If you are submitting this request on behalf of someone else, you will need to supply identification for them. Fields marked with an asterisk * must be completed for your request to be submitted.

Please select the country whose law applies to your request.*

Select one ▾

Personal information

Name used to search *

This should be the name that, when used as a search query, produces a list of results from which you are requesting that a result, or results, be removed

Full name of requester

Your own name, if you are representing somebody else (if you're sending a request for someone else, you must have the legal authority to act on their behalf)

If you are submitting this request on behalf of someone else, please specify your relationship to that person (for example: "parent" or "attorney")

Picture 1: Search removal under data protection law in Europe

Source: https://support.google.com/legal/contact/lr_eudpa?product=websearch&hl=en

An interesting issue regarding the request for removal of search results is the fact that a requester has to provide Google with a copy of an identity-confirming document in order to verify that the removal is requested by an authorized person.⁸ On one hand, it is a fully understandable and legitimate requirement. On the other hand, however, it is ironic that a person requiring the protection of their privacy and personal data has to provide Google with their personal and other data (at least name, surname and contact e-mail address).

Besides the aforementioned, a requester is also obliged to provide a reason why the given page should be removed. If a request is to be successful, requesters need to:

- identify each result in a list of results that they want to remove by providing the URL addresses of web pages referred to by the result;
- explain why the linked web page concerns them (or why it concerns another user, if the request is submitted on behalf of someone else);
- for each URL address, explain why the inclusion of the concerned address in the search results is irrelevant, outdated, or otherwise objectionable.

Submitting the request does not mean the automatic removal of search results.⁹ As the decision of the Court of Justice of the EU suggests, courts, national offices for personal data protection, as well as other assessors are supposed to proceed individually in every single case. On the grounds of the provided criteria, Google carries out its own selection and as it has claimed, it rejects requests for removal of embarrassing material submitted by politicians, celebrities, or public figures (which also correlates with the judicature of European courts, under which such persons have a weakened right to privacy, note of D.K.).¹⁰

⁸ Google explains this requirement as follows: "To prevent fraudulent removal requests from people impersonating others, trying to harm competitors, or improperly seeking to suppress legal information, we need to verify identity. Please attach a legible copy of a document that verifies your identity (or the identity of the person whom you are authorized to represent). A passport or other government-issued ID is not required. You may obscure parts of the document (e.g., numbers) as long as the remaining information identifies you. You may also obscure your photograph, unless you are asking for removal of pages that include photographs of you. Google will use this information solely to help us document the authenticity of your request and will delete the copy within a month of closing your removal request case except as otherwise required by law."

⁹ More details in SULLIVAN, D.: *How Google's New "Right To Be Forgotten" Form Works: An Explainer*. [online]. [2014-07-23]. Available at: <<http://searchengineland.com/google-right-to-be-forgotten-form-192837>>.

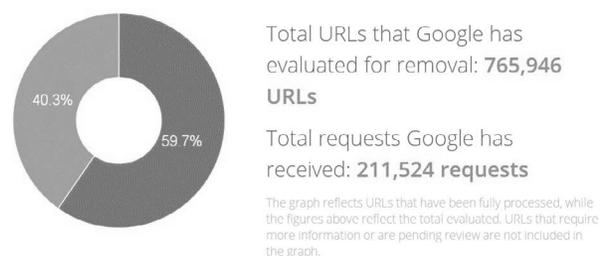
¹⁰ DUELL, M.: *Google will turn down requests from MPs and celebrities who demand embarrassing material is removed from search results*. [online]. [2014-07-23]. Available at: <<http://www.dailymail.co.uk/news/article-2673913/Google-turn-requests-MPs-celebrities-demand-embarrassing-material-removed-search-results.html>>.

After the removal request form was made public we decided to test the time it takes Google to meet a request in practice. On July 22, 2014, we submitted a request for the removal of a webpage from search results. It was an uncomplicated issue, clearly falling under the criteria specified by the Court. We received a notice of decision on November 13, 2014, i.e. less than four months following the submission of the request. We can thus conclude that, with regard to a great number of requests, Google is able to solve the issues regarding page removal quite promptly.

The latest published data confirm the fact that interest in data removal is really significant. Therefore, for the sake of transparency and due to the great interest of the media, Google has launched a page where both statistics and other details in relation to submitted requests can be followed online.¹¹

URL removal request totals

The graph below shows data on the percentages of URLs we have reviewed and processed. The figures on the right are based on the total number of requests received. These data date back to the launch of our official request process on May 29, 2014.



Picture 2: URL removal request totals

Source: <http://www.google.com/transparencyreport/removals/europeprivacy>

The number of requests by the afternoon of February 4, 2015 was 211,524, concerning 765,946 web pages. Overall, Google has met 40.3 % of the requests and 59.7 % of them were rejected. Data regarding Slovak requesters specifically is also available. By February 4, 2015, Google had received 890 requests from Slovakia concerning 3,621 web pages. The company has met 35.5 % of the Slovak requests and rejected 64.5 %.

In order to be able to have a better overview of what requests have and respectively do not have a chance to succeed, Google provides examples on the aforementioned page. The successful requests, which are among cases with pages removed from search results on the grounds of entering a name, include the following:

- A woman from Italy submitted a request to remove a several-decades-old article on the murder of her husband, which included her name.
- Google received a request from a victim of a rape from Germany to remove a link to a newspaper article on this crime.
- A victim of a crime from Italy submitted a request for the removal of three links to pages discussing the crime which had happened several decades ago.
- Partial success was achieved by a doctor from Great Britain, who asked Google to remove more than fifty links to articles reporting about a botched procedure. Three pages that contained personal information about the doctor but did not mention the procedure have been removed from search results for his name. The rest of the links to reports on the incident has remained in search results.

¹¹ *Transparency Report. European privacy requests for search removals.* [online]. [2015-02-04]. Available at: <<http://www.google.com/transparencyreport/removals/europeprivacy/>>.

- A person from Italy asked Google to remove a link to a page that had taken a self-published image and reposted it.
- A man from Great Britain asked Google to remove a link to news summary of a local magistrate's decision that included the man's guilty verdict. Under the UK Rehabilitation of Offenders Act, this conviction has been spent.
- A person from Belgium asked Google to remove a link to an article covering a contest in which he participated as a minor.

Unsuccessful requests (i.e. those with unremoved search results based on entering a name) included the following:

- A person from Italy submitted multiple requests to Google and asked to remove 20 links to recent articles about his arrest for financial crimes committed in a professional capacity.
- A media professional from Great Britain asked Google to remove four links to articles reporting on embarrassing content he had posted on the Internet.
- A person from Great Britain asked Google to remove links to articles on the Internet that reference his dismissal for sexual crimes committed on the job.
- Google received a request from a person from Netherlands for the removal of more than fifty links to articles and blog posts reporting on public outcry over accusations that he was abusing welfare services.
- A person from Italy asked Google to remove a link to a copy of an official state document published by a state authority reporting on the acts of fraud committed by the individual.
- A public official from Great Britain asked Google to remove a link to a student organization's petition demanding his removal.
- A former clergyman from Great Britain asked Google to remove two links to articles covering an investigation of sexual abuse accusations while in his professional capacity.

The following image shows the top ten web pages dealt with in relation to removing search results:

Sites that are most impacted

The list below highlights the domains where we've removed the most URLs from search results.

Of total URLs requested for removal from search results, these top ten sites account for 8%

www.facebook.com URLs removed: 5384	profileengine.com URLs removed: 5109	groups.google.com URLs removed: 3595	badoo.com URLs removed: 3264
www.youtube.com URLs removed: 3198	www.yasni.de URLs removed: 2229	www.wherevent.com URLs removed: 2219	www.192.com URLs removed: 2117
plus.google.com URLs removed: 2061	www.yasni.fr URLs removed: 1850		

Picture 3: The most impacted sites

Source: <http://www.google.com/transparencyreport/removals/europeprivacy>

Practical Implementation by Other Search Engines

Other search engines have also decided to respect the decision of the Court of Justice of the EU. Since mid July 2014, a form similar to Google's is available for the Bing search engine.¹² It is even more detailed than Google's, as it demands further details from requesters, particularly whether they are public figures (e.g. a politician, celebrity) and whether they play, or might play in the future, a role within their community related to leadership, trust, or safety in the broadest sense (e.g. a teacher, clergy, police officer, doctor, community leader). Moreover, Bing requests a more detailed substantiation with more precise reasons for removing a page from search results. As of December 1, 2014, Bing had received 699 requests for blocking the content from 2,362 web pages. As company representatives stated, they had responded to 79 of them as of this date.¹³

Request to Block Bing Search Results In Europe

If you are a European resident and want to request that Microsoft block search results on Bing in response to searches on your name, please use this form.

We encourage you to provide complete and relevant information for each applicable question on this form. We will use the information that you provide to evaluate your request. We may also consider other sources of information beyond this form to verify or supplement the information you provide. This information will help us to consider the balance between your individual privacy interest and the public interest in protecting free expression and the free availability of information, consistent with European law. As a result, making a request does not guarantee that a particular search result will be blocked.

Note regarding minor children: If you are a minor, you may submit this form on your own. If you are a parent or legal guardian of a minor, you may submit this form on that minor's behalf, in which case, all references to "you" or "your" will refer to the minor child.

Given the many questions that have been raised about how the recent ruling from the Court of Justice of the European Union should be implemented, this form and the related processes may change as additional guidance becomes available. Submissions may be reevaluated over time.

Part 1 - Your Identity, Residence and Contact Information

Your name*

(The name you provide will be the name on which you are requesting the specified search results to be blocked. The name you provide may be your legal name or a name by which you are commonly known.)

Your country of residence*

Please upload documentation that verifies the above information.

- Include one or more documents that verify your full legal name and your European country of residence.
- If the name on which you are requesting search results to be blocked is a name other than your legal name, please include documentation verifying this is a name by which you are commonly known.
- You may obscure any details on the documents that are not related to verifying your name, country of residence, or the validity of the document itself.
- The documents need not be government-issued identification, but please be aware that we may not be able to respond to requests where the verification of this information is incomplete, inadequate or unreliable.
- We will use this documentation only to verify the information you have provided on this form, and we will delete the documents you provide once your request has been resolved, except as required by law.

Picture 4: Request to Block Bing Search Results In Europe

Source: <https://www.bing.com/webmaster/tools/eu-privacy-request>

A response from the Yahoo search engine has been expected. No similar form has been published (as far as we are aware) and the issue has not been clarified following statements by company representatives. So far, they have only expressed verbal declarations about their respect for the decision of the Court.¹⁴

It is appropriate in this relation to point out that contrary to the decisions of national courts of lower instance the decisions of the Court of Justice of the EU are generally binding as the source of law.¹⁵ This means that rules included in the decision are not only binding for the participants of legal proceedings, but are also decisive for all other similar cases in the future (as legal precedents). This infers that the analysed decision of the Court of Justice of the EU applies to all search engines, i.e. they are obliged to follow it.

On the other hand, however, nobody can force Yahoo to proceed similarly to Google and Bing. We therefore suppose that even though Yahoo has not been quick to provide a solution to the issue of removing pages from search results by means of a form, in case it is addressed, a relevant request to remove pages, e.g. via contact e-mail, Yahoo will meet such a request.

12 See: <<https://www.bing.com/webmaster/tools/eu-privacy-request>>.

13 *Microsoft and Yahoo respond to European 'right to be forgotten' requests.* [online]. [2015-01-31]. Available at: <<http://www.theguardian.com/technology/2014/dec/01/microsoft-yahoo-right-to-be-forgotten>>.

14 Cf. opus cit.

15 KROŠLÁK, D., ŠMIHULA, D.: *Základy teórie štátu a práva*. Bratislava : Iura Edition, 2013, p. 190.

Conclusion

Since its impact and establishment in the life of the masses, the Internet has been considered to be the freest medium, which has been accepted as a necessary matter of course and nothing should be changed in this relation. On the other hand, however, absolute freedom and laxity result in a number of negative features (e.g. cyber-criminality). We therefore assume that certain rules regulating the functioning of the Internet as well as the content of its pages should be available.

In this respect, the decision of the EU Court of Justice in relation to Google Spain can be considered to be one of the milestones of the protection of privacy on the Internet in Europe. The judgment has a potentially significant impact on the operation of the Internet and, in particular, of what has become, for many Internet users, one of its most important components – the Google search. The judgment directly impacts the degree of access to data that Internet users have with respect to specific individuals. Further, as regards its business impact, it does not affect Google alone. Its broad construction of the concept of 'control' over personal data means that it is capable of shifting responsibility for breaches of privacy related to information available on the Internet towards a broad range of Internet operators, as well as imposing on them obligations relating to Articles 7 and 8 of the EU Charter of Fundamental Rights. Thus, the judgment has important implications for the adjudication of fundamental rights in the EU, affecting both the way in which certain aspects of privacy rights are understood, as well as their enforcement.¹⁶

As has been shown, Google managed to implement the decision in practice. However, this is related to the fact that the decision was taken into account with all due respect and great capacity was adopted to find solutions, while the issue of how to set parameters for decision-making in removing pages from search results in case of a collision between the interest of informing the public and the interest of an individual in protecting their privacy had to be dealt with. In the practical implementation of the decision, Google reflected that a legitimate interest of both, the public and the requester, need to be balanced carefully, and in general, nobody can ever be absolutely prioritised.

However, that is not to say that all questions have been answered and all problems of Google have been solved.¹⁷ Probably the most sensitive issue is Google's interpretation that the CJ EU decision is only applicable for the Google domains of the EU and the EFTA member states (hence for domain names like google.sk, google.it, etc.). On the other hand, WP29 considers that in order to give full effect to the data subject's rights as defined in the Court's ruling, de-listing decisions must be implemented in such a way that they guarantee the effective and complete protection of data subjects' rights and that EU law cannot be circumvented. In that sense, limiting de-listing to EU domains on the grounds that users tend to access search engines via their national domains cannot be considered a sufficient means to satisfactorily guarantee the rights of data subjects according to the ruling. In practice, this means that in any case de-listing should also be effective on all relevant domains, including .com.

Therefore, there has currently been pressure exerted on Google to expand the possibility of removing search results from the domain google.com as well. However, the search engine has not shown much will to take the requested steps.¹⁸

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16 FRANTZIOU, E.: *Further Developments in the Right to be Forgotten: The European Court of Justice's Judgment in Case C-131/12, Google Spain, SL, Google Inc v Agencia Espanola de Proteccion de Datos.* In Human Rights Law Review, 2014, Vol. 14, No. 4, p. 761-762.

17 On the contrary, there are a lot of issues to be solved: FLORIDI, L.: *Right to be forgotten poses more questions than answers.* [online]. [2015-02-01]. Available at: <<http://www.theguardian.com/technology/2014/nov/11/right-to-be-forgotten-more-questions-than-answers-google>>.

18 For more details see: *EU to Google: expand 'right to be forgotten' to Google.com.* [online]. [2015-02-01]. Available at: <<http://www.theguardian.com/technology/2014/nov/27/eu-to-google-expand-right-to-be-forgotten-to-googlecom>>.

BIBLIOGRAPHY:

- APARICIO SALOM, J.: *A third party to whom data are disclosed: A third group among those processing data*. In International Data Privacy Law, 2014. [online]. [2014-07-23]. Available at: <<http://idpl.oxfordjournals.org/content/4/3/177.full.pdf+html>>. ISSN 2044-4001.
- AUSLOOS, J.: *The „Right to be Forgotten”-Worth remembering?* In Computer Law & Security Review, 2012, Vol. 28, No. 2, p. 143-152.
- DUELL, M.: *Google “will turn down requests from MPs and celebrities who demand embarrassing material is removed from search results”*. [online]. [2014-07-23]. Available at: <<http://www.dailymail.co.uk/news/article-2673913/Google-turn-requests-MPs-celebrities-demand-embarrassing-material-removed-search-results.html>>.
- EU to Google: *expand “right to be forgotten” to Google.com*. [online]. [2015-02-01]. Available at: <<http://www.theguardian.com/technology/2014/nov/27/eu-to-google-expand-right-to-be-forgotten-to-googlecom>>.
- FAZLIOGLU, M.: *Forget me not: the clash of the right to be forgotten and freedom of expression on the Internet*. In International Data Privacy Law, 2013. [online]. [2014-07-23]. Available at: <<http://idpl.oxfordjournals.org/content/early/2013/05/26/idpl.ipt010.full.pdf+html>>. ISSN 2044-4001.
- FLORIDI, L.: *Right to be forgotten poses more questions than answers*. [online]. [2015-02-01]. Available at: <<http://www.theguardian.com/technology/2014/nov/11/right-to-be-forgotten-more-questions-than-answers-google>>.
- FRANTZIOU, E.: *Further Developments in the Right to be Forgotten: The European Court of Justice’s Judgment in Case C-131/12, Google Spain, SL, Google Inc v Agencia Espanola de Proteccion de Datos*. In Human Rights Law Review, 2014, Vol. 14, No. 4, p. 761-777. ISSN 1461-7781.
- GÁBRIS, T., KOVÁR, L.: *Restriction of information dissemination on the Internet*. In Communication Today, 2013, Vol. 4, No. 2, p. 6-20. ISSN 1338-130X.
- Guidelines on the Implementation of the European Union’s Judgment on “Google Spain and Inc v. Agencia Espanola de Proteccion de Datos (AEPD) and Mario Costeja Gonzalez”*. [online]. [2015-02-12]. Available at: <http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf>.
- HERMSTRÜWER, Y., DICKERT, S.: *Tearing the veil of privacy law: An experiment on chilling effects and the right to be forgotten*. Working Paper. Preprints of the Max Planck Institute for Research on Collective Goods, No. 2013/15. [online]. [2014-07-23]. Available at: <<https://www.econstor.eu/dspace/bitstream/10419/84983/1/757205445.pdf>>.
- IGLEZAKIS, I.: *The Right To Be Forgotten in the Google Spain Case (case C-131/12): A Clear Victory for Data Protection or an Obstacle for the Internet?* [online]. [2015-02-12]. Available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2472323>.
- JUDGMENT OF THE COURT (Grand Chamber) of 13 May 2014 in case C131/12: *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja González*. [online]. [2014-07-23]. Available at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0131>>.
- KOKOTT, J., SOBOTTA, Ch.: *The distinction between privacy and data protection in the jurisprudence of the CJEU and the ECtHR*. In International Data Privacy Law, 2013, Vol. 3, No. 4, p. 222-228. ISSN 2044-3994.
- KORENHOF, P., AUSLOOS, J., SZEKELY, I., AMBROSE, M., SARTOR, G., LEENES, R.: *Timing the Right to Be Forgotten. A study into “time” as a factor in deciding about retention or erasure of data*. Working paper. [online]. [2014-07-23]. Available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2436436>.
- KROŠLÁK, D., ŠMIHULA, D.: *Základy teórie štátu a práva*. Bratislava: Iura Edition, 2013. 201 p. ISBN 978-80-8078-622-9.
- MCGOLDRICK, D.: *Developments in the Right to be Forgotten*. In Human Rights Law Review, 2013, Vol. 13, No. 4, p. 761-776. ISSN 1461-7781.
- Microsoft and Yahoo respond to European „right to be forgotten” requests*. [online]. [2015-01-31]. Available at: <<http://www.theguardian.com/technology/2014/dec/01/microsoft-yahoo-right-to-be-forgotten>>.
- ORESKOVIC, A.: *Google gets take-down requests after European court ruling: source*. [online]. [2014-07-23]. Available at: <<http://www.reuters.com/article/2014/05/14/us-google-eu-idUSBREA4D0P820140514?>>.
- PEIFER, K. N.: *Personal privacy rights in the 21st century: logic and challenges*. In Journal of Intellectual Property Law & Practice, 2014, Vol. 9, No. 3, p. 231-238.

Request to Block Bing Search Results In Europe. [online]. [2014-07-23]. Available at: <<https://www.bing.com/webmaster/tools/eu-privacy-request>>.

ROSEN, J.: *The Right to Be Forgotten*. In 64 Stan. L. Rev. 88, 2012, February 13, 2012. [online]. [2014-07-23]. Available at: <<http://www.stanfordlawreview.org/sites/default/files/online/topics/64-SLRO-88.pdf>>.

Search removal request under data protection law in Europe. [online]. [2014-07-23]. Available at: <https://support.google.com/legal/contact/!r_cudpa?product=websearch&hl=en>.

STUART, A. H.: *Google Search Results: Buried if Not Forgotten*. In North Carolina Journal of Law & Technology, 2014, Vol. 15, No. 3, p. 463-517.

SULLIVAN, D.: *How Google’s New “Right To Be Forgotten” Form Works: An Explainer*. [online]. [2014-07-23]. Available at: <<http://searchengineland.com/google-right-to-be-forgotten-form-192837>>.

Transparency Report. European privacy requests for search removals. [online]. [2015-02-04]. Available at: <<http://www.google.com/transparencyreport/removals/europeprivacy/?hl=en-US>>.

