



GOOGLE LINKS EU RULING AND ITS IMPLICATIONS FOR RESEARCH

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Presented at the International Symposium on
Information Management in a Changing World
Antalya, Turkey November 25, 2014

PRE- AND POST-DIGITAL WORLD

Rumors, whispers, soon forgotten

Persistent data

Memory forever

STORY

Mr. Gonzales (Spain)

Complaint Spanish data protection agency

- Spanish newspaper
- Google



Complaint basis:

google search of *Mr. Gonzales* name bring up links to a 12-year story of govt action against him

Asserted long-resolved matter and information now irrelevant



Demand:

Google be required to remove or conceal his personal data

So links referencing the story would no longer appear in search results

RULING

AEPD sided with Mr. Gonzales

search engine operators subject to data protection legislation

- carry out data processing for which they are responsible and
- act as intermediaries in the information society.

AEPD has power to require operators to

- withdraw data and
- prohibit access to certain data



Reasons:

- to protect against the location and dissemination of data that would compromise:
 - the fundamental right to data protection and
 - the dignity of persons



So AEPD ordered Google to

- withdraw from its index personal data related to Mr. Gonzales, and
- Prevent future access to the data

AEPD also held that while search engines have this obligation, not necessary to erase the information from the original web-site.



Both Googles: suit at the Spanish National High Court against the AEPD decision

In framing the question, the AN noted people who

- may not wish search engines to enable indefinite access
- to information published by third parties
- containing personal data about them

Q then was: what obligations do search engine operators have to protect such persons' personal data?



National High Court:

- depends on how you interpret the European personal data processing protection Directive 95/46/EC (domesticated into Spanish law)

Problem: formulated before the current search technologies

So? No decision. Refer to the Court of Justice of the European Union for an interpretation of the Directive-- requesting preliminary rulings on certain questions:

PARTIES

Google Spain SL, Google Inc.

v

**Agencia Española de Protección de Datos (AEPD),
Mario Costeja González**



RULING

European Court of Justice

Delivered May 13, 2014 (Grand Chamber)

QS

1. Directive reaches Google, Inc./Google Spain?
2. Google Search activities involving personal data published by 3rd parties constitutes the “processing of data”?
3. Activities mean Google is a “Controller” of the personal data it indexes?




4. May Google be required to remove data from its index without informing the owner of the website containing the data?

5. Does right to the erasure or blocking of data (Art 12(b)) and the right to object (Art 14) relating to the “right to be forgotten” extend to information that has been lawfully published by third parties?

ANSWERS

1. Territorial application

- activities of the search engine operator and that of its EU based establishment are “inextricably linked”—advertising drives engine profits
- Processing of personal data is carried out by an establishment on the territory of a member state
- Orientation of activities towards inhabitants of a member state



2. Google indexing, search, and retrieval activities of information containing personal data is classified as “processing of personal data.”

3. With respect to such processing, the search engine operator is a “Controller.”



4. A search engine operator (such as Google) may be ordered by a supervisory/judicial authority to remove personal data from search results and/or links leading to such personal data

There is no requirement that this data should be simultaneously removed from the 3rd party website, or that the website owner should be notified or required to delete data

RIGHT TO BE FORGOTTEN

5. ECJ: “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 displayed following a search made on the basis of his name,

without it being necessary in order to find such a right that the inclusion of the information in question in that list causes prejudice to the data subject.”

- Whether or not the information was lawfully published
- Not absolute: Public role may justify interference with these fundamental rights;
- public policy interests (e.g. freedom of expression, media)



Right carries over into the proposed Data Protection Regulation updating the 1995 Directive [Art 16&17]

2% company annual worldwide income penalty on violations

Chilling effect and self-censorship?

SO WHAT DOES THIS MEAN FOR DATA MANAGEMENT?

Following the exercise of the RTB4GTN, some data will disappear, or become difficult to access

Indefinite storage of data will be curtailed, especially where it relies on search engines for retrieval



may have a likely impact on research (esp. social sciences)


Granted, most research is conducted on aggregated data, and not personally identifiable information

Even where the latter is present, it is ignored or redacted



But one of the features of the new online world is that individuals not only leave digital footprints (data they leave behind in their online interactions, but also

There may be data shadows (data created about them by others)
[Koops, 2011]



Presumably, if both of these are connected to the individual through personally-identifiable information (i.e., name, images), links to them can be removed through the exercise of the RTB4GTN

At this point, it is unclear how much data will be restricted in either category



data mining: loss of links to data linked with PII will probably affect some disciplines more than others in academic circles

Data brokerage business will probably take the biggest hit: value of data mined enhanced by ability to connect it to individuals [Tsesis, 2014]

Certain databases that have relied on search engines to gather information will be negatively affected

CONCLUSIONS?

Google a universal search engine: RTB4GTN effects will be felt beyond Europe;


other countries might extend same right to their citizens,

- forcing Google to pull even more links from search engine results (already recent cases in Argentina against Google and Yahoo to removed racy photos)



Europe could withdraw from the “Safe Harbor” arrangement it has with the US and

- demand the application of its data protection laws there,
- including the RTB4GTN [clash w/freedom of expression]



Almost a year before the EU decision, already calls to have Google “demote” rankings of certain personally sensitive information in its search results upon requests (in the US!) [Stuart, 2013]

In effect: “bury the data”



The EU Court has done one better:

**CUT THE LINK! Do not bury! Forget! Or at least
VEIL the data.**

DATA IS THERE...

If you can find it!



THANK YOU!

Qs?