

# European court lawyer sides with Google (Update)

June 25 2013, by Toby Sterling

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A top lawyer at the European Court of Justice said Tuesday that Google and other search engines should not have to remove web pages containing personal information from their search indexes.

In a blow for the "right to be forgotten" privacy principle in Europe, the court's independent Advocate General, Niilo Jaaskinen, said in a formal opinion that websites, not Google, should bear responsibility for information they publish.

Jaaskinen said Google's search function "does not imply any control over the content included on third party web pages." His opinion is not binding, but judges will typically follow much of its reasoning when they issue their decision later this year.

Google's information indexing system "does not even enable the Internet search engine provider to distinguish between personal data...and other data," Jaaskinen said.

The Luxembourg-based ECJ was asked to weigh in on the issue after a case in Spain, where the national data protection agency received complaints from individuals who said personal information from years earlier could be found on a simple Internet search.

The Spanish agency decided in their favor and ordered Google Spain and Google to ensure the information did not come up in search results. Google contested that in a Spanish court, arguing it shouldn't be put in

the position of deciding what pages to censor.

The Spanish agency had invoked the "right to be forgotten," a principle derived from the idea that European citizens should be allowed control over their own personal data—not have it stored and made accessible online by large companies.

However, Jaaskinen said that the idea that there is any general "right to be forgotten" is a misunderstanding.

Rather, he said, European individuals have a right to correct wrong information or protest the way their personal information is being used—when they have good grounds.

That "does not entitle a person to restrict or terminate dissemination of personal data that he considers to be harmful or contrary to his interests," he said.

The Spanish data protection agency said Tuesday it was still studying the ruling and did not have any immediate reaction.

Google, based in Mountain View, California, welcomed Jaaskinen's opinion.

"We're glad to see it supports our long-held view that requiring search engines to suppress 'legitimate and legal information' would amount to censorship," said Bill Echikson, who is "Head of Free Expression" for Google in Europe.

Jaaskinen's opinion did go against Google on one important point: it said that Google or other companies cannot argue they are not subject to local data regulators' authority because their servers are physically located in another country.

Joe McNamee, Director of European Digital Rights, a digital civil rights group, said the issue of "the right to be forgotten" has been overblown. He said his organization is more concerned with other privacy protections being weakened under a large re-write of data protection law currently under debate by the European Parliament.

"The definition of personal data is being changed, consent rights are being weakened, the restrictions on profiling are being undermined and our data is being shipped off to a foreign country," he said in an email.

Google remains subject to local laws, and it could be forced to take steps amounting to blocking websites that house illegal content, such as those infringing intellectual property or those that display libelous or criminal information.

But Jaaskinen's opinion noted that when information is legal and in the public domain, blocking it would violate publishers' right to freedom of expression.

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