

Freedom of expression and the right to be forgotten

May 23 2014



The European Court of Justice has ruled that Google must amend some search results at the request of ordinary people in a test of the so-called "right to be forgotten." The court [said](#) links to "irrelevant" and outdated data should be erased on request.

Professor Lorna Woods, a member of Human Rights Centre at the University of Essex and of City University London's Centre for Law Justice and Journalism (CLJJ) set out the facts of the case in a post on the CLJJ blog [site](#).

This long-awaited judgment raised questions about the balance between privacy and freedom of expression in the digital environment. It has repercussions beyond Google, potentially affecting other intermediaries, such as social networking sites.

The case relates to an article of just 36 words published by a Spanish newspaper in 1998. Mario Costeja González lodged a complaint against the publisher of La Vanguardia and Google because an [auction notice](#) about his repossessed home appeared prominently in [internet search results](#). He stated that the debt recovery proceedings had been fully resolved for a number of years and that reference to them was now entirely irrelevant. Mr Costeja González claimed the existence of the [article](#) infringed his privacy.

The complaint against La Vanguardia was rejected on the grounds that the information had been lawfully published however the complaint against Google Spain and Google Inc. was upheld. The judgement states that "an internet [search engine](#) operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties."

On Tuesday 20th May, the Centre for Law Justice and Journalism (CLJJ) convened a panel of experts to debate the implications of the ruling, in association with the University of Essex's Human Rights Centre (HRC).

Peter Noorlander is Legal Director of the Media Legal Defence Initiative an organisation which provides legal help for journalists, bloggers and independent media across the world. He suggested that the ECJ judgement has 'straightjacketed the librarian':

"The implications of the judgment are massive. Google has been put on the spot but other search engines are affected too. Anyone who feels that information which is no longer 'relevant' to their current situation - be it an old conviction for shoplifting, the beating of a spouse, or a conviction for corruption - will be in a strong position to approach Google and request that the page listing that information is de-indexed."

"The United States Supreme Court referred to the World Wide Web as 'comparable, from the readers' viewpoint, to both a vast library including millions of readily available and indexed publications.' This remains unchanged - the vast library is still there. And its growing. But the indexing is under serious threat - the [European Court of Justice has straight-jacketed the librarian](#)."

"The real loser in this case: the public and the interest in society at large in the free flow of information and ideas."

Steve Peers is a Professor of Law at the University of Essex. In a blog post published on the CLJJ blog entitled Google Spain and the EU's data protection Directive, he argues that the essential problem with the judgment is that the court concerns itself so much with enforcing the right to privacy, that it forgets that other rights are also applicable.

"As regards the right to privacy, the Court's analysis is convincing. Of course, information on a named person's financial affairs is 'personal data', and it has long been established that prior publication is irrelevant in this regard - a particularly important point for search engines. Equally, the Court had previously ruled (convincingly) in the [Lindqvist judgment](#) that placing data online is a form of 'data processing'."

"While it is less obvious that Google is a 'data controller', given that it does not control the original publication of the data, the Court's conclusion that search engines are data controllers is ultimately convincing, given the additional processing that results from the use of a search engine, along with the enormous added value that a search engine brings for anyone who seeks to find that data. In this sense, Google is a victim of its own success."

Jonathan Coad is a Partner at law firm Lewis Silkin with a wide range of media and entertainment clients. He described the judgement as 'of no

practical significance at all' arguing that it was 'blindingly obvious infringement' of Article 10 of the European Convention on Human Rights which provides the right to freedom of expression and information. He explained that Google isn't going to roll over as a result of the judgement because the success of its business model depends on it.

Hugh Tomlinson QC, Matrix Chambers, is a specialist in media and information law including privacy and data protection. He said "I don't subscribe to the view that this is life shattering or the end of the internet as we know it."

David Haynes, a visiting lecturer and doctoral candidate in the School of Mathematics, Computer Science and Engineering at City University London is investigating the relationship between risk, regulation and access to personal data. In his recent blog titled 'Google Spain - can we really be forgotten?', he lists several practical objections to the European Court of Justice's (ECJ) ruling. Haynes is concerned that "seemingly benign legislation to protect individual privacy can also be used to curtail access to legitimate information available on the internet." He says:

"Perhaps most disturbing of all is the capricious and arbitrary nature of the acceptability criterion for linking to personal information. The press release about the judgement says 'The Court [European Court of Justice] observes in this regard that even initially lawful processing of accurate data may, in the course of time, become incompatible with the [Data Protection] directive'. This means that something that starts out being acceptable to link to could at some arbitrary point in time become unacceptable. It is not difficult to see how this principle could be subverted by less benign governments to deal with 'unacceptable' criticisms and scrutiny from their own citizens."

Provided by City University London

Citation: Freedom of expression and the right to be forgotten (2014, May 23) retrieved 23 May 2024 from <https://phys.org/news/2014-05-freedom-forgotten.html>

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