

## ORAL CONCOURS 2014

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#### **'Right to be forgotten': EU court rules Google must amend results on request**

A European court has backed the "right to be forgotten" and said Google must delete "inadequate, irrelevant or no longer relevant" data from its results when a member of the public requests it.

The test case ruling by the European Union's court of justice against Google Spain was brought by a Spanish man, Mario Costeja González, after he failed to secure the deletion of an auction notice of his repossessed home dating from 1998 on the website of a mass circulation newspaper in Catalonia.

González argued that the matter, in which his house had been auctioned to recover his social security debts, had been resolved and should no longer be linked to him whenever his name was searched on Google.

The European court judges ruled that under existing EU data protection laws Google had to erase links to two pages on La Vanguardia's website from the results that are produced when González's name is put into the search engine. The European judges made clear that in their view the EU data protection directive already established a "right to be forgotten". This appears to pre-empt lengthy negotiations within the EU over a new data protection directive which could establish a limited "right to be forgotten". The judges said they had found that the inclusion of links in the Google results related to an individual who wanted them removed "on the grounds that he wishes the information appearing on those pages relating to him personally to be 'forgotten' after a certain time" was incompatible with the existing data protection law. They said the data that had to be erased could "appear to be inadequate, irrelevant or no longer relevant or excessive ... in the light of the time that had elapsed". They added that even accurate data that had been lawfully published initially could "in the course of time become incompatible with the directive". In technical terms the ruling establishes that a search engine such as Google must be regarded as a "data controller" under the data protection laws in those EU countries where it sets up a branch to promote and sell advertising. The case is the first of many in the pipeline against Google in which Spanish citizens want the search engine to delete personal information about them from their search results.

The EU justice commissioner, Viviane Reding, welcomed the court's decision, saying it was a clear victory for the protection of the personal data of Europeans. "The ruling confirms the need to bring today's data protection rules from the 'digital stone age' into today's modern computing world," she said in a post on Facebook.

A Google spokesperson said: "This is a disappointing ruling for search engines and online publishers in general. We are very surprised that it differs so dramatically from the advocate general's opinion and the warnings and consequences that he spelled out. We now need to take time to analyse the implications."

The British justice secretary, Chris Grayling, has been a leading opponent of Reding's proposals for an explicit EU "right to be forgotten".

The Ministry of Justice has estimated that the European commission's proposals could cost British businesses, which include many leading data and tech firms, £360m a year. The information commissioner has called the "right to be forgotten" proposals "a regime that no one will pay for". The justice minister Simon Hughes said in March that "it is clearly better that we take time to get this right rather than rush into something that proves unworkable and costly". He said it was important that any new EU law would not impose costly rules that would jeopardise the growth of the digital economy.

Emma Carr, acting director of the privacy rights campaign Big Brother Watch, said: "The principle that you have a right to be forgotten is a laudable one, but it was never intended to be a way for people to rewrite history. Search engines do not host information and trying to get them to censor legal content from their results is the wrong approach. Information should be tackled at source, which in this case is a Spanish newspaper, otherwise we start getting into very dangerous territory. "The regulators should be doing more to ensure that people have an informed choice over what data is collected about them by companies like Google, but if we start to make intermediaries responsible for the actions of the content of other people, you're establishing a model that leads to greater surveillance and a risk of censorship."