

Search Engine Freedom and Accountability

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The case of *Google Spain*

Algorithms and Accountability

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A man with grey hair, wearing a dark suit, white shirt, and dark tie, is seated at a desk. He has a somber expression and is looking down. His right hand is on the desk, and his left hand is raised, with fingers slightly curled. The background is a blue world map. On the left side of the image, there are two logos: the Fox News Channel logo and the CNN logo.

**FOX
NEWS**
channel

CNN

How do we judge the actions of search engines?

Search engines as a new phenomenon in the media and communications landscape.

Algorithmic selection and ranking as a dominant new ingredient in the production of *accessibility* of public information (in contrast to availability).

Legally, what is the proper balance between freedom to select, rank, apply algorithms on the one hand and the responsibility for the choices made in view of their impact and potential harms to users, third parties and society more generally?

More generally, which justified expectations can we have with respect to the way in which different (including dominant) search engines operate? What are the standards we can use, or should use to judge search result generation by a company like Google?

Google™



AGENCIA
ESPAÑOLA DE
PROTECCIÓN
DE DATOS



CJEU, C-131/12 (Google Spain)



I. Court of Justice JEU, 13 May 2014: (*Google Spain*)

Background: Mr. Costeja complains about links to a government mandated publication about insolvency proceedings in 1990s on the basis of data protection law, which contains a right to request erasure of personal data. Google denies responsibility and jurisdiction, leading to legal proceedings in Spain and CJEU judgment.

Basic summary result CJEU Court ruling:

- Data protection law (comprehensive data privacy regulations) applies to ‘people search’.
- Google has to comply with the right to object and right to request erasure;
- The standard for granting removal requests is whether the personal data is:

“inadequate, irrelevant or no longer relevant, or excessive in relation to those purposes and in the light of the time that has elapsed.”
- Google has obligation to decide on requests; appeal possibility to Data Protection Authorities (and those decisions can typically be appealed in a Court).

Accountability for Algorithmic Decision-Making

The Google Spain judgment should be seen as a specific instance of the law setting legal conditions with respect to automated decision making:

- On request and for name searches: obligation to review the propriety of algorithmically produced search results *in individual cases*.

“They can’t do it at scale. There’s no way”

Justin Brookman, CDT stated in The Hill in response to the ruling.

- In other words, the search engine is no longer considered an intermediary and put under an obligation to become (on request) the true editor of their search engine results.

Where does that lead us.....?

I. The actual standard?

“inadequate, irrelevant or no longer relevant, or excessive in relation to those purposes [of offering a search engine to the public] and in the light of the time that has elapsed.”

Data protection law does not offer more guidance than this general information quality / purpose limitation standard.

The actual standards have to come from elsewhere and will reflect differences in Europe about reasonable restraints on publications about people affecting their privacy or reputation.

- A'dam District Ct, 18.9.14 (Arthur van M. / Google): “negative publicity as a result of a serious crime generally continues to be relevant information about a person.”
- Amsterdam District Ct, 12.2.15 (V.H. / Google): “In any case, it is clear that the respective URLs are relevant as a search result for a search on the persons name. It's a sure thing these articles are about him.”

Eric Schmidt, Google Advisory Council Meeting in London:

“I think at the moment we're sort of stuck with de-listing and manual review. We as a company would prefer an automatic way to do this and we would of course-- we would all like the law to be more precise as to the definition of the terms that have been described.”



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Conclusion

Google Spain is about accountability for algorithmic decision making, breaking with the intermediary perspective on search engines.

While it imposes accountability via a right to request review in individual cases, it does so without providing a clear standard for review.

The actual standard for review will to a large extent end up being integrated (approximated) in the existing mix of algorithms shaping access to information in search engines.