

Data Privacy in Europe: The 2014 Google Decision of the European Court of Justice

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On May 15, 2014 the European Court of Justice (ECJ) issued a decision in *Google Spain and Google*¹. The Court held that "an internet search provider is responsible for the processing that it carries out of personal data that appear on web pages published by third parties"²:

"Thus, if following a search made on the basis of a person's name, the list of results displays a link to a web page which contains information on the person in question, that data subject may approach the operator directly and, where the operator does not grant his request, bring the matter before the competent authorities in order to obtain, under certain conditions, the removal of that link from the list of results."³

This decision relates to and interprets the EU Directive 95/46/EC⁴. The objective of the Directive is to protect the fundamental rights and freedoms of natural persons, particularly the right of privacy, but also removing obstacles to the free flow of such data. The Court emphasized that an internet search provider automatically, constantly and systematically **collects data** within the meaning of the Directive, and **processes data** when it retrieves, records, organizes, stores and discloses data.⁵

During the first few weeks after the decision, Google received 70,000 deletion requests with more than 12,000 requests from Germany. The "right to be forgotten" has become the new buzz word while decision supporters claim a victory in the fight for self-determination and democracy. Opponents of the decision claim media censorship and the end of a free internet.

On May 16, 2014 Sigmar Gabriel, Germany's Minister for Economy and Energy, published a full page article in the "Frankfurter Allgemeine Zeitung" (FAZ) titled "The Politics of a new Operating System".⁶ The Minister announced that Europe would now, after the Google decision, find a solution to address the "information capitalism which calls into question the whole market economy system".⁷ He emphasized that "the Court restored the rule of law by stating that Google is not allowed to ignore European standards by storing and processing data outside of the EU" and that "Europe is standing for the opposite of the totalitarian idea to make every detail of human behavior, human emotions and human thoughts the object of capitalistic marketing strategies"⁸. The Minister has called for "the serious consideration to decartelize Google"⁹. Heiko Maas, the German Minister of Justice, was quoted in an FAZ article of June 28, 2014 that he thought a forced break-up of Google should be explored, if

¹ Case C-131/12, *Google Spain SL, Google Inc. v. Agencia Espanola de Proteccion de Datos, Mario Costeja Gonzalez*, ECLI:EU:C:2014:317 (May 13, 2014)

² Court of Justice of the European Union, Press Release No. 70/14, Luxembourg (May 13, 2014), headline

³ Id. ¶ 1

⁴ EU Directive 95/46/EC on the protection of individuals in regard to the processing of personal data and on the free movement of such data, EUR-Lex 62012CJ0131

⁵ Google, C-131/12, ¶ 28: "Therefore, it must be found that, in exploring the internet automatically, constantly and systematically in search of the information which is published there, the operator of a search engine 'collects' such data which it subsequently 'retrieves', 'records' and 'organises' within the framework of its indexing programmes, 'stores' on its servers and, as the case may be, 'discloses' and 'makes available' to its users in the form of lists of search results. As those operations are referred to expressly and unconditionally in Article 2(b) of Directive 95/46, they must be classified as 'processing' within the meaning of that provision, regardless of the fact that the operator of the search engine also carries out the same operations in respect of other types of information and does not distinguish between the latter and the personal data."

⁶ Frankfurter Allgemeine Zeitung, May 16, 2014, p. 9

⁷ Id. ¶ subtitle of article: „Das EuGH-Urteil gegen Google ist ein letzter Auslöser. Es führt uns vor Augen, dass der Informationskapitalismus die gesamte marktwirtschaftliche Ordnung zur Disposition stellt.“

⁸ Id. ¶ 12

⁹ Id. ¶ 23

Google continues to abuse its market domination.¹⁰ Google searches are generally estimated to amount to 85% to 90% in Germany¹¹. He proposed to never store any data unless it was warranted for a specific reason ("Anlass")¹².

On July 9, 2014 the German Monopolies Commission published its bi-annual expert report and proposed a "strengthened cooperation between data protection and competition government entities"¹³. The Commission concluded that it was obvious that monopolies agencies had in the past primarily addressed competition problems which disadvantaged commercial internet providers and advertisers (primary market level), but that problems with access to users' data (secondary market level) had only been addressed very indirectly.¹⁴

The Commission further stated that the problem of excessive access to data needed to be investigated in terms of competition policy¹⁵ and that the ability of users to deal with their data (data sovereignty) in an autonomous manner needed to be strengthened.¹⁶ The Commission expressly supported a prompt passing of the European Data Protection Regulations from a competition policy perspective¹⁷. The new European Data Protection Law is slated to be adopted in 2015.

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¹⁰ Frankfurter Allgemeine Zeitung, June 28, 2014, p.4, ¶ 10

¹¹ German Monopolies Commission, Expert Report XX, Chapter 1, Current Problems of Competition Policy. Google, Facebook + Co - A Challenge for Competition Politics, (July 9, 2014), Subchapter 3, Data Access and Market Power, p. 63, ¶ 26

¹² FAZ, June 28, 2014, Id. ¶ 18

¹³ German Monopolies Commission, Id., p. 71, ¶ 58,

¹⁴ German Monopolies Commission, Short Version, Chapter 1, ¶ 5

¹⁵ Id., ¶ 6

¹⁶ Id., ¶ 6

¹⁷ Id., ¶ 6