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The European Court of Justice Clarifies the Territorial Scope of the “Right to be Forgotten”

The European Court of Justice Has Found in Google’s Favor That Search Engine Operators Are Not Required to Carry Out Global De-Referencing

SUMMARY

In *Google LLC, successor in law to Google Inc. v. Commission nationale de l’informatique et des libertés (CNIL)* (C-507/17), the European Court of Justice (“ECJ”) has clarified the territorial scope of the “right to be forgotten.” The ECJ has confirmed that the operator of a search engine is not required to carry out de-referencing of links following a request from an individual based in the EU on all versions of its search engine. Operators are, however, required to carry out de-referencing on versions of their search engines corresponding to EU Member States, and to put in place measures seriously discouraging internet users located within Member States from gaining access to links de-referenced within the EU which appear on versions of their search engines outside of the EU.

DECISION

The “right to be forgotten” (now enshrined in the European General Data Protection Regulation (“GDPR”)) gives EU-based individuals the right to have their personal data erased by entities to whom GDPR applies. In a prior decision from 2014 (*Google Spain and Google* (C-131/12)), the ECJ found that this right requires that search engine operators must remove links between search results and a webpage, if that webpage contains information that the individual deems should be “forgotten.” This right is known as a “right to de-referencing.”

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In this most recent decision, the ECJ addressed several questions referred to it by the French Conseil d'État following a dispute arising between Google Inc. and the French data protection supervisory authority (CNIL) on the scope of Google's de-referencing. Those questions sought to ascertain whether EU law relating to the protection of personal data should be interpreted as meaning that, where a search engine operator grants a request for de-referencing, that operator is required to carry out de-referencing on all versions of its search engine, whether inside or outside the EU.

ECJ acknowledged that internet users' access to referencing of a link, whether inside or outside of the EU, would likely have immediate and substantial effects on the individual to whom the information found at the link related. On that basis, global de-referencing would ensure the full protection that the "right to be forgotten" was designed to provide to an individual. That said, it was not clear that the EU legislature had intended that the rights of individuals should apply beyond the geographical scope of EU Member States. In addition, the ECJ noted that numerous third countries do not recognize the right to de-referencing or have a different approach to that right, and that EU law does not provide for cooperation instruments and mechanisms regarding the scope of de-referencing outside the EU.

On this basis, the ECJ concluded that where an individual's request for de-referencing has been granted, there is no requirement on the search engine operator to carry out de-referencing on versions of its search engine located outside of the EU. The ECJ noted, however, that whilst global de-referencing may not be a requirement under EU law, it does not follow that supervisory and judicial authorities within Member States are prohibited from requiring it, having weighed up an individual's privacy rights on the one hand, and the right to freedom of information on the other, in light of applicable standards of national law. In addition, the ECJ found that de-referencing must, if necessary, be accompanied by measures which effectively prevent or at least seriously discourage internet users in the EU from gaining access to links that are the subject of the request for de-referencing through a version of the search engine located outside of the EU. In the present case, the ECJ noted that it was for the French Conseil d'État to determine whether the measures adopted by Google had met those requirements.

The decision can be found [here](#).

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