Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-507/17
Google v CNIL

Advocate General Szpunar proposes that the Court should limit the scope of the de-referencing that search engine operators are required to carry out to the EU

By decision of 21 May 2015, the President of the French Commission nationale de l'informatique et des libertés (National Commission for Information Technology and Civil Liberties; 'the CNIL') served formal notice on Google that, when acceding to a request from a natural person for the removal of links to web pages from the list of results displayed following a search performed on the basis of that person's name, it must apply that removal to all of its search engine's domain name extensions.

Google refused to comply with that formal notice, merely removing the links in question from only the results displayed following a search performed on the domain names corresponding to the versions of its search engine in the Member States of the EU. Moreover, the CNIL regarded as insufficient Google's further 'geo-blocking' proposal, made after the time limit laid down in the formal notice had passed, whereby internet users would be prevented from accessing the results in question, from an IP address deemed to be located in the State of residence of the person concerned, after performing a search on the basis of that person's name, no matter which version of the search engine they used.

By adjudication of 10 March 2016, the CNIL, after finding that Google had failed to comply with that formal notice by the prescribed time limit, imposed on it a penalty, which was publicised, of €100 000. By an application lodged before the Conseil d'État (Council of State, France), Google seeks to have that adjudication annulled. The Conseil d'État decided to refer several questions to the Court of Justice for a preliminary ruling.

In today's Opinion, Advocate General Maciej Szpunar begins by indicating that the provisions of EU law applicable to the present case[1] do not expressly govern the issue of the territorial scope of de-referencing. He therefore takes the view that a distinction must be made depending on the location from which the search is performed. Thus, search requests made outside the EU should not be affected by the de-referencing of the search results. He is therefore not in favour of giving the provisions of EU law such a broad interpretation that they would have effects beyond the borders of the 28 Member States. The Advocate General thus underlines that, even though extraterritorial effects are possible in certain, clearly defined, cases affecting the internal market, such as in competition law or trademark law, by the very nature of the internet, which is worldwide and found everywhere in the same way, that possibility is not comparable.

According to the Advocate General, the fundamental right to be forgotten must be balanced against other fundamental rights, such as the right to data protection and the right to privacy, as well as the legitimate public interest in accessing the information sought. The Advocate General continues that, if worldwide de-referencing were permitted, the EU authorities would not be able to define and determine a right to receive information, let alone balance it against the other fundamental rights to data protection and to privacy. This is all the more so since such a public

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

interest in accessing information will necessarily vary from one third State to another depending on its geographic location. There would be a risk, if worldwide de-referencing were possible, that persons in third States would be prevented from accessing information and, in turn, that third States would prevent persons in the EU Member States from accessing information.

However, the Advocate General does not rule out the possibility that, in certain situations, a search engine operator may be required to take de-referencing actions at the worldwide level, although he takes the view that the situation at issue in the present case does not justify this.

He therefore proposes that the Court should hold that **the search engine operator is not required, when acceding to a request for de-referencing, to carry out that de-referencing on all the domain names of its search engine in such a way that the links in question no longer appear, irrespective of the location from which the search on the basis of the requesting party's name is performed**.

However, the Advocate General underlines that, **once a right to de-referencing within the EU has been established, the search engine operator must take every measure available to it to ensure full and effective de-referencing within the EU, including by use of the 'geo-blocking' technique, in respect of an IP address deemed to be located in one of the Member States, irrespective of the domain name used by the internet user who performs the search**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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