

What happened to 'the right to be forgotten'?

Free Speech Debate tells the story of the advisory council to Google on the right to be forgotten, and talks to council member Luciano Floridi.



In May 2014, a landmark decision by the European Court of Justice (ECJ) triggered a global debate about free speech and privacy online. The ruling in the case of [Google Spain v AEPD and Mario Costeja González](#) gave European citizens the right to request search engines to delist links returned in results based on individual name searches, when information contained therein was found to be "inadequate, irrelevant or no longer relevant, or excessive". Critics feared that the ruling was akin to censorship and that it opened the door for governments, politicians, and criminals to wipe the internet of undesired information. Proponents of the ECJ decision welcomed it on the grounds that it promised to strengthen privacy and data protection rights of European citizens and to curtail the invasive power of search engine empires. The debate epitomised the clash between American free speech doctrine and Europe's growing concern over data protection.

Google - Europe's leading search engine provider with a [market share of over 90 per cent](#) - did not welcome the ruling and found its criteria to be too [vague and subjective](#). Representing itself as a neutral library catalogue, Google argued that the ruling amounted to shooting the messenger - the search engine - rather than tackling the problem at the source - the data publisher. Yet the

Free Speech Debate

Thirteen languages. Ten principles. One conversation.

<https://freespeechdebate.com>

company stressed that it would do its best to "[respect the court's authority](#)". In order to establish guidelines on how to balance a "person's right to be forgotten" with "the public's right to information", it convened a council of ten experts in July 2014, headed by the then Google chairman Eric Schmidt and chief legal officer David Drummond. In the following months, [Google's advisory council](#) toured seven European cities to hold panel discussions with representatives from the fields of data protection, privacy, free speech, academia, and journalism.

In early February 2015, over eight months after the initial ECJ court decision, the advisory council published its [report](#) on "The Right to Be Forgotten" outlining its "advice to the company" on how to implement the ruling. The report rightly highlighted the inaccuracy of the very premise that the ECJ decision established a right to be forgotten, stating that the ruling in fact entitles data subjects to request, under certain conditions, delistings of results returned to individual name searches.

The core of the 41-page-long report consisted of a set of criteria for assessing delisting requests, ranging from the data subject's role in public life to the types of information considered to be of public interest. The report also discussed procedural issues, such as the information to be provided by data subjects when submitting delisting requests, as well as questions about time and transparency. Optimistically speaking, the document represented a well-meaning practical attempt - a step-by-step guide - on how to deal with removal requests submitted to Google. The devil, of course, lay in the detail. The report made clear that each request should be assessed individually and that in many cases, competing concerns would have to be weighed against each other. While the report offered some general guidelines for doing so, it did little to circumvent the issue of subjectivity, one of the main criticisms of the ruling voiced by Google itself. This was only highlighted by the fact that the final pages of the report contained dissenting opinions by most of its authors.

There are many problems with a case-by-case approach for delisting: it is costly, slow, and lacks transparency. Given the hundreds of thousands of delisting requests Google has already received, the time and labour required to deal with the right to be delisted is staggering. At the time of writing, Google - through a "[team of specially trained reviewers](#)" - has evaluated close to 400,000 [removal requests](#) relating to over 1m URLs. Google has the financial resources to handle such costs, but smaller competitors or new market entrants almost certainly will not.

One of the most controversial procedural criteria considered in the report relates to the geographic scope of delistings. The advisory council recommended that delisting should be applied to European searches only. Effectively, this means that Google users can find search results removed from their local search engine versions by simply changing the top level domain to one outside of Europe (for example to google.com) since information contained in removed links is still available at the source site. In a dissenting comment on the report, advisory council member and former German justice minister Sabine Leutheusser-Schnarrenberger observed that such an approach was highly problematic. The ECJ ruling, she wrote, "implies a complete and effective protection of data subject's rights (...) any circumvention of these rights must be prevented". The same

Free Speech Debate

Thirteen languages. Ten principles. One conversation.
<https://freespeechdebate.com>

conclusions are formulated in [guidelines](#) published by the [Article 29 Data Protection Working Party](#) cited on Google's [FAQ](#) page on search link removals.

Many other aspects of the report invite further inquiry. Wikipedia co-founder and advisory council member Jimmy Wales argued that "the recommendations to Google (...) are deeply flawed due to the law itself being deeply flawed". Given this, does the advisory council report provide any reassurance or clarity for European internet users or those concerned about privacy, data protection, and free speech?

The problem in answering this question is that it is unclear to what extent Google follows the recommendations proposed by its advisory council. In an interview with Free Speech Debate, Luciano Floridi, Professor of Philosophy and Ethics at the Oxford Internet Institute and member of the advisory council to Google, argued that its work has been entirely absorbed into the company's practices. Yet, Google's own [request form](#) for search delistings and even its FAQ page on how delisting requests are evaluated avoid any mention of the advisory council. Instead, Google states that it has "developed criteria in alignment with the [Article 29 Working Party's guidelines](#)" - guidelines which were published several months before the report of the advisory council. Further information provided by Google suggests that it acts counter even to the recommendations by the Article 29 Working Party, most importantly with regards to the geographical scope of delistings discussed above and to notifying the data publisher (webmaster) about removals. The Article 29 Working Party advised that search engines should not inform the webmasters of the pages affected as there "is no legal basis for such routine communication under EU data protection law". Google, on the other hand, states that its policy is to notify webmasters about search results removals.

If you want to find out more about the specific criteria under which Google is operating, you are re-directed to a [questionnaire](#) dated 31 July 2014 – written before the first public meeting of its advisory council. Seen in a critical light, this would suggest that the work of the much-publicised advisory council to Google and its consultations of data protection and free speech experts was little more than an expensive publicity stunt. Professor Floridi pointed out that a company such as Google is obliged to follow the law, but providing any further information on link removals is entirely within its own discretion. It seems that, for better or for worse, the creation of a transparent and accountable system to strengthen data protection rights of Europeans while safeguarding freedom of information online, will therefore continue to rest on the shoulders of European legislators.

Read about the latest plans in Britain on the 'right to be forgotten' [here](#)

Watch Luciano Floridi discuss this "right" here:

Free Speech Debate

Thirteen languages. Ten principles. One conversation.
<https://freespeechdebate.com>

Published on:February 17, 2016