



# Where is the Data? Research Implications of the "Right to be Forgotten"

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# Decision

- ▶ European Court of Justice
  - ▶ Delivered May 13, 2014 (Grand Chamber)
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# Parties

➤ **Google Spain SL, Google Inc.**

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➤ **Agencia Española de Protección de Datos (AEPD), Mario Costeja González,**



# Background




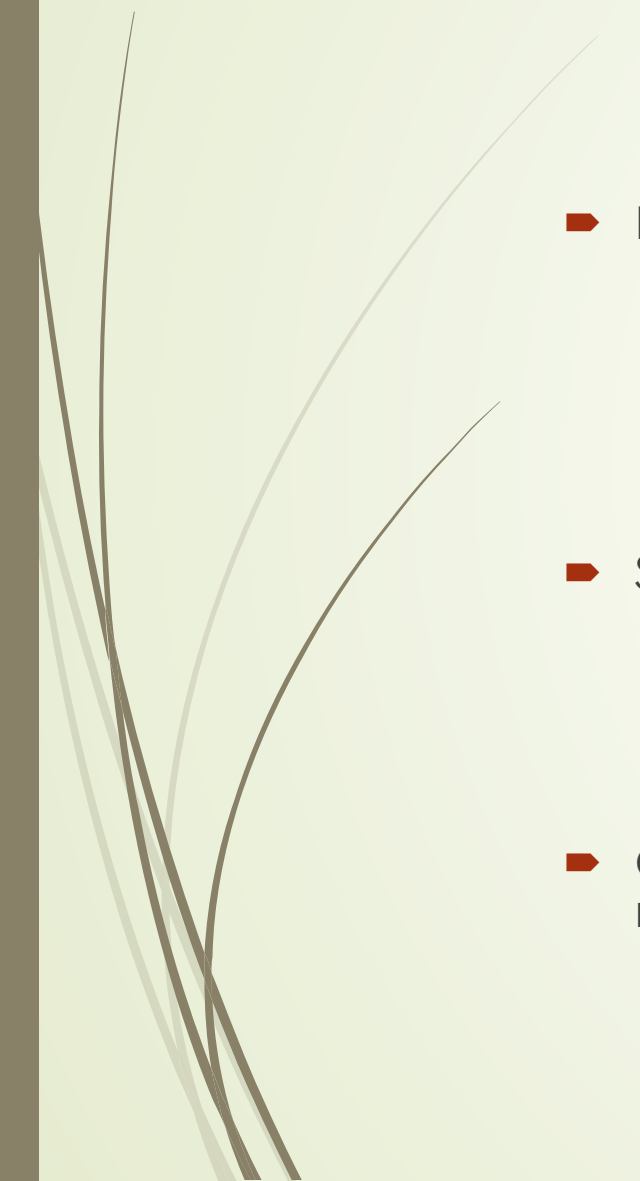
- Mr. Gonzales is a citizen of Spain
- Filed Complaint with AEPD against a widely-circulated Spanish newspaper and against Google
- Basis of complaint: a google search of Mr. Gonzales name would bring up links to a 12-year old announcement for a real-estate auction to recover government social security debts that he owed
- Asserted matter had been long-resolved and that the information was now irrelevant
- Demand: Google be required to remove or conceal his personal data, so that the links referencing the story would no longer appear in search results







# Ruling



- ▶ AEPD sided with Mr. Gonzales as per his complaint against Google:
- ▶ operators of search engines are subject to data protection legislation
  - ▶ given that they carry out data processing for which they are responsible and
  - ▶ act as intermediaries in the information society.
- ▶ AEPD has the power to require the search engine operators to
  - ▶ withdraw data and
  - ▶ prohibit access to certain data

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- ▶ Reasons:
    - ▶ to protect against the location and dissemination of data that would compromise:
      - ▶ the fundamental right to data protection and
      - ▶ the dignity of persons
  - ▶ So AEPD ordered Google to
    - ▶ withdraw from its index personal data related to Mr. Gonzales, and
    - ▶ Prevent future access to the data
  - ▶ Curiously, AEPD also held that while search engines have this obligation, it is not necessary to erase the information from the original web-site.

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- ▶ Both Googles filed suit at the Spanish National High Court (Audencia Nacional) against the AEPD decision
  - ▶ In framing the question, the AN noted that there are people who may not wish search engines to enable indefinite access to information published by third parties containing personal data about them
  - ▶ Q then was: what obligations do search engine operators have to protect such persons' personal data?

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- ▶ Well, the AN said, it depends on how you interpret the European personal data processing protection Directive 95/46/EC, which had also been domesticated into Spanish law
  - ▶ Problem: this was formulated before the current search technologies
  - ▶ So? No decision. Refer to the Court of Justice of the European Union for an interpretation of the Directive, specifically requesting preliminary rulings on certain questions:





# Qs

- ▶ Territorial application of the Directive
- ▶ Whether Google Search activities (locating, indexing, storing, and retrieving searches) involving personal data published by 3rd parties constitutes the “processing of data” encompassed by the Directive
- ▶ Also, whether those Google Search activities mean that Google is a “Controller” of the personal data it indexes
- ▶ Whether Google may be required to remove data from its index without informing the owner of the website containing the data
- ▶ Whether the right to the erasure or blocking of data (Art 12(b)) and the right to object (Art 14) relating to the “right to be forgotten” extends to information that has been lawfully published by third parties



# Answers







- ▶ Territorial application

- ▶ The activities of the search engine operator and that of its EU based establishment are “inextricably linked”—advertising drives engine profits

- ▶ Processing of personal data is carried out by an establishment on the territory of a member state

- ▶ Orientation of activities towards inhabitants of a member state


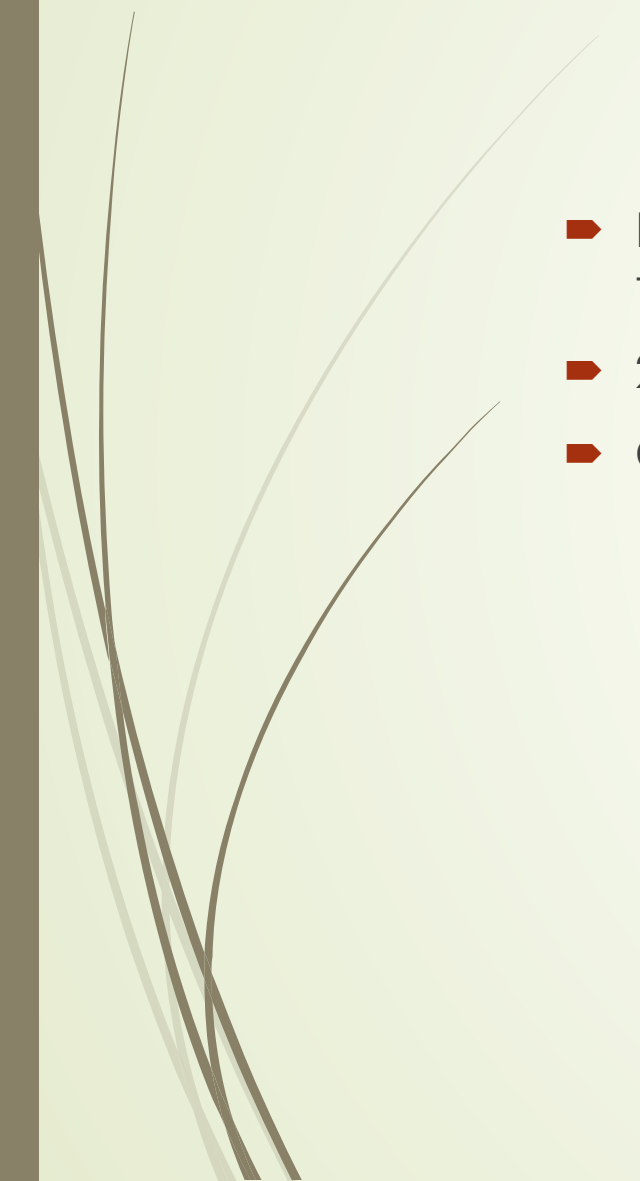
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- ▶ Google indexing, search, and retrieval activities of information containing personal data is classified as “processing of personal data.”
  - ▶ With respect to such processing, the search engine operator is a “Controller.”


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- ▶ A search engine operator (such as Google) may be ordered by a supervisory/judicial authority to remove personal data from search results and/or links leading to such personal data
  - ▶ There is no requirement that this data should be simultaneously removed from the 3<sup>rd</sup> party website, or that the website owner should be notified or required to delete data



# Right to be Forgotten


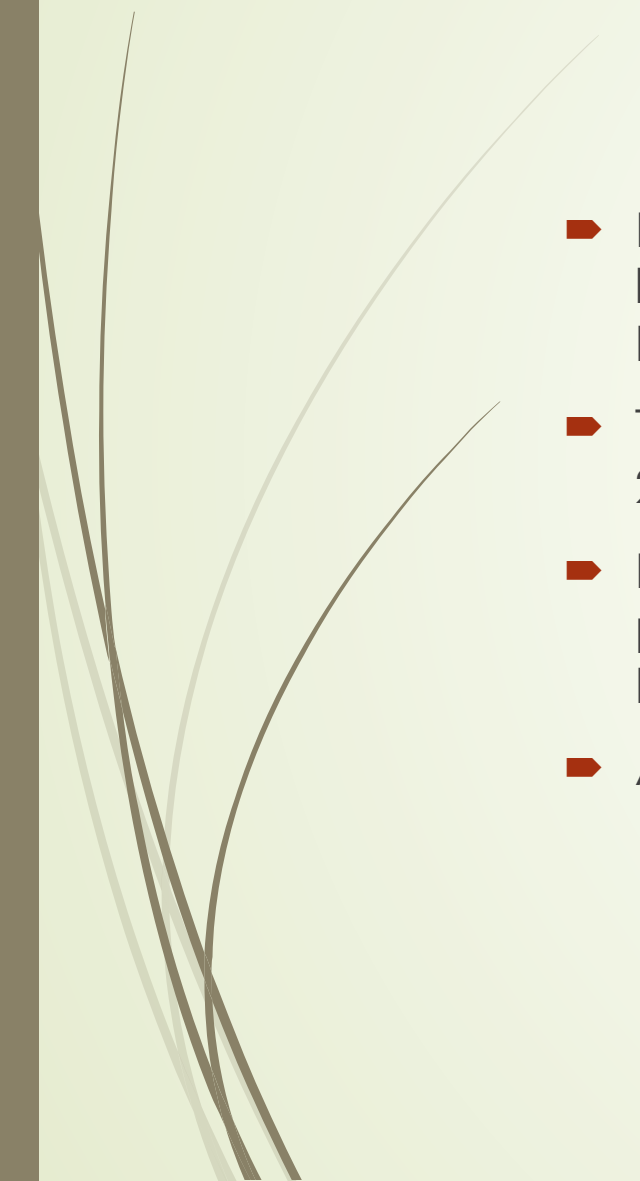
- ▶ **“the data subject has a right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results displayed following a search made on the basis of his name, without it being necessary in order to find such a right that the inclusion of the information in question in that list causes prejudice to the data subject.”**
- ▶ Whether or not the information was lawfully published
- ▶ Not absolute: Public role may justify interference with these fundamental rights;
- ▶ public policy interests (e.g. freedom of expression, media)

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- Right carries over into the proposed Data Protection Regulation updating the 1995 Directive [Art 16&17]
  - 2% company annual worldwide income penalty on violations
  - Chilling effect and self-censorship?







# So what does this mean for Data Management?

- ▶ Following the exercise of the RTB4GTN, some data will disappear, or become difficult to access
- ▶ Indefinite storage of data will be curtailed, especially where it relies on search engines for retrieval
- ▶ This may have a likely impact on research, especially in the social sciences
- ▶ Granted, most research is conducted on aggregated data, and not personally identifiable information
- ▶ Even where the latter is present, it is ignored or redacted

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- But one of the features of the new online world is that individuals not only leave digital footprints (data they leave behind in their online interactions, but also
  - There may be data shadows (data created about them by others) [Koops, 2011]
  - Presumably, if both of these are connected to the individual through personally-identifiable information (i.e., name, images), links to them can be removed through the exercise of the RTB4GTN
  - At this point, it is unclear how much data will be restricted in either category



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- ▶ As to data mining, the loss of links to data linked with PI information will probably affect some disciplines more than others in academic circles
  - ▶ Data brokerage business will probably take the biggest hit, as the value of the data mined is enhanced by the ability to connect it to individuals [Tsesis, 2014]
  - ▶ Certain databases that have relied on search engines to gather information will be negatively affected

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- ▶ The effects of the RTB4GTN will be felt beyond Europe; Google is a universal search engine
  - ▶ Moreover, some other countries might extend this same right to their citizens, thus forcing Google to pull even more links from search engine results (already recent cases in Argentina against Google and Yahoo to removed racy photos)
  - ▶ Europe could withdraw from the “Safe Harbor” arrangement it has with the US and demand the application of its data protection laws there, including the RTB4GTN [clash w/freedom of expression]



# Conclusion?

- ▶ Almost a year before the EU decision, there were already calls to have Google “demote” the rankings of certain personally sensitive information in its search results upon requests (in the US!) [Stuart, 2013]
- ▶ “bury the data,” in effect
- ▶ The EU Court has done one better:

CUT THE LINK! Do not bury! Forget! Or at least VEIL the data.



# Data is there...

- ▶ If you can find it!
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# Thank you!

➤ Qs?

