

# The Advisory Council to Google on the Right to be Forgotten

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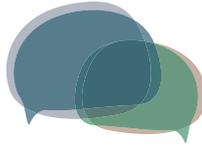
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# 1. Introduction

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We were invited, as independent experts, to join the Advisory Council to Google on the Right to be Forgotten following the Court of Justice of the European Union's ruling in *Google Spain and Inc. vs. Agencia Española de Protección de Datos (AEPD) and Mario Costeja Gonzalez C131/12* ("the Ruling") in May 2014. Google asked us to advise it on performing the balancing act between an individual's right to privacy and the public's interest in access to information. This report summarizes our advice to the company, which is based on several inputs:

- our expertise;
- our own independent views and assessments;
- evidence we heard from experts around Europe during our seven-city tour, some of whom were critical of the Ruling and others of whom argued that the Ruling came to good conclusions;
- input provided by Internet users and subject matter experts via the website [www.google.com/advisorycouncil/](http://www.google.com/advisorycouncil/);
- other materials we have reviewed, including European Court of Human Rights case law, policy guidelines of news organizations, and the Article 29 Working Party's Guidelines on the Implementation of the Ruling adopted on 26 November 2014.

We all volunteered our time to participate on this Advisory Council and we were not paid by the company for our time. Google supported the travel costs associated with seven public meetings around Europe and three private meetings we held together in London. We have not signed

nondisclosure agreements and we are not in a contractual relationship with Google for this project.

To our knowledge, the information Google has shared with us throughout this process has not been confidential—all information that we have been given is publicly available. Google did make three experts available to us at our first private meeting: an engineer, who explained Search; a Google lawyer, who explained their compliance procedures; and a lawyer from an outside law firm, who explained the legal basis of the Ruling. Additionally, Google provided a secretariat staff to support our work, including three full-time employees and four part-time interns. However, Google has not shared information with us about any specific request received from data subjects or about specific criteria being used today to evaluate these requests.

We worked on an accelerated timeline, given the urgency with which Google had to begin complying with the Ruling once handed down. For our input to be most useful, Google asked us to issue this report by early 2015, after holding a series of public consultations across Europe. A detailed schedule of these meetings as well as the experts who presented at each can be found in the Appendix. Recordings of the meetings are available online at [www.google.com/advisorycouncil/](http://www.google.com/advisorycouncil/).

We were convened to advise on criteria that Google should use in striking a balance, such as what role the data subject plays in public life, or whether the information is outdated or no longer relevant. We also considered the best process and inputs to Google's decision making, including input from the original publishers of information at issue, as potentially important aspects of the balancing exercise.

We have found the public discussion around the Ruling to be a valuable contribution to an ongoing general debate about the role of citizen rights in the Internet. If nothing else, this Ruling and the discussion around it have raised awareness of how to protect these rights in a digital era. We hope the recommendations that follow continue to raise that awareness.

## 2. Overview of the Ruling

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The Ruling has been widely referred to as creating a “Right to be Forgotten.” This reference is so generally understood that this Advisory Council was convened to advise on the implementation of this right. In fact, the Ruling does not establish a general Right to be Forgotten.<sup>1</sup>

Implementation of the Ruling does not have the effect of “forgetting” information about a data subject. Instead, it requires Google to remove links returned in search results based on an individual’s name when those results are “*inadequate, irrelevant or no longer relevant, or excessive.*”<sup>2</sup> Google is not required to remove those results if there is an overriding public interest in them “for particular reasons, such as the role played by the data subject in public life.”<sup>3</sup>

Throughout this report, we shall refer to the process of removing links in

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<sup>1</sup> Moritz Karg, Commissioner for Data Protection Hamburg Data Protection Authority, Advisory Council Meeting Berlin, 14 October 2014: “We are not talking about the right to be forgotten, but the right of an individual to appeal against the processing of his own individual data.” Christoph Fiedler, Lawyer Association of German Magazine Publishers, Advisory Council Meeting Berlin, 14 October 2014: “Really we do agree that there is no right to forget, not even after the decision, but there is a new right. That is a right of making it more difficult to search for certain information, generally speaking in search engines.” Karel Verhoeven, Editor in Chief De Standaard, Advisory Council Meeting Brussels, 4 November 2014: “Law cannot dictate to us to forget something. But we feel that a more correct approach is that you would redefine it as a right not to be mentioned anymore....”

<sup>2</sup> At Para 94, the Ruling.

<sup>3</sup> At Para 97, the Ruling.

search results based on queries for an individual's name as "delisting". Once delisted, the information is still available at the source site, but its accessibility to the general public is reduced because search queries against the data subject's name will not return a link to the source publication. Those with the resources to do more extensive searches or research will still be able to find the information, since only the link to the information has been removed, not the information itself.

The legal criteria for removing content altogether from the underlying source may be different from those applied to delisting, given the publisher's rights to free expression. If Google decides not to delist a link, the data subject can challenge this decision before the competent Data Protection Authority or Court.

### 3. Nature of the Rights at Issue in the Ruling

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The Ruling should be interpreted in light of the rights to privacy and data protection, as well as rights to freedom of expression and access to information. By referring to these rights, we invoke the conceptual frameworks established in various instruments that outline and enshrine fundamental freedoms and rights in Europe.

The right to privacy is enshrined in Article 7 of the Charter of Fundamental Rights of the European Union (henceforth the Charter) and in Article 8 of the European Convention on Human Rights (henceforth the Convention).

It affirms respect for private life and freedom from interference by the public authorities except in accordance with the law.

The right to data protection is granted by Article 8 of the Charter. It ensures that data are processed fairly, for specified purposes, and on the basis of consent or some other legitimate basis laid down by law. It also ensures that data which have been collected can be accessed and rectified. Privacy and data protection are fundamental rights.

Freedom of expression and information are enshrined in Article 10 of the Convention and Article 11 of the Charter. These rights establish that expressing ideas and holding opinions as well as receiving and imparting information and ideas, regardless of frontiers, are fundamental rights.

The Ruling invokes a data subject's right to object to, and require cessation of, the processing of data about himself or herself. This right exists regardless of whether the processing at issue causes harm or is prejudicial in some way to the data subject.

The Court of Justice of the European Union (CJEU) noted in the Ruling that the data subject's fundamental rights "override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in finding that information upon a search relating to the data subject's name."<sup>4</sup> However, the Court acknowledged that, for particular reasons, the public will have an interest in continued ability to find the link by searching on the data subject's name. Therefore, the operator of the search engine is directed to engage in a balancing test to determine whether the data protection rights of the data subject are

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<sup>4</sup> At Para 97, the Ruling.

outweighed by “the preponderant interest of the general public in having, on account of inclusion in the list of results, access to the information in question.” The question of whether the data subject experiences harm from such accessibility to the information is in our view relevant to this balancing test.

Assessing harm to the data subject must be done on an ethical, legal, and practical basis, which can be understood based both on CJEU case law interpreting the Charter and on European Court of Human Rights (ECHR) case law interpreting the Convention.<sup>5</sup> The scope of rights and harms outlined in Article 8 of the Convention have been well analyzed and developed in case law outside the data protection context, particularly law concerning defamation and privacy claims.<sup>6</sup> The animating values in those cases often concern personal honor, dignity, and reputation as well as the protection of sensitive or intimate personal information. Similar values animate the case law that bounds the scope of data protection rights under Article 8 of the Charter. As a result, the Ruling should be read in light of this ongoing dialog between the CJEU and the ECHR, and, where relevant, case law of national higher courts, delineating the scope of, and relationship between, privacy and expression rights. The ruling, while reinforcing European citizens’ data protection rights, should not be interpreted as a legitimization for practices of censorship of past information and limiting the right to access information.

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<sup>5</sup> For example, Cecilia Álvarez (Counsel Uría Menéndez, Advisory Council Meeting Madrid, 9 September 2014) noted that the European Human Rights Charter includes “criteria to determine when there is an intrusion to a fundamental right as to the type of restrictions that must be accepted (...) They revolve around national security, public safety, economic wellbeing of the country, prevention of disorder for a crime, (...) the protection of the rights and freedoms of others (...) protection of reputation” and so on. Paul Nemitz (Director for Fundamental Rights and Union Citizenship-European Commission, Advisory Council Meeting Brussels, 4 November 2014) similarly argued that the Ruling must be read in context of the corpus of existing European jurisprudence on the issue.

<sup>6</sup> Susanne Dehmel, Head of Privacy Department Bitkom e.V., Advisory Council Meeting Berlin, 14 October 2014: “If we don’t have a unique law on a press law in the European countries, we would have a legislation of the European Court for Human Rights, the differentiation of public figures, and what do they have to experience in terms of limitations to their private freedom.”

# 4. Criteria for Assessing Delisting Requests

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We identified four primary criteria on which we advise Google to evaluate delisting requests from individual data subjects. None of these four criteria is determinative on its own, and there is no strict hierarchy among them. Furthermore, social or technical changes may cause these criteria to evolve over time.

## 4.1. Data Subject's Role in Public Life

As explicitly noted in the Ruling,<sup>7</sup> the role an individual plays in public life will weigh on the balancing act Google must perform between the data subject's data protection rights and the public's interest in access to information via a name-based search. The first step in evaluating a delisting request should be to determine the individual's role in public life. These categorizations are not in themselves determinative, and some evaluation along the other criteria laid out below is always necessary. However, the relative weight applied to the other criteria will be influenced by the role the individual plays in public life.

In general, individuals will fall into one of the following three categories:

- Individuals with **clear roles in public life** (for example, politicians, CEOs, celebrities, religious leaders, sports stars, performing artists):

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<sup>7</sup> At Paras 81, 97-99, the Ruling.

delisting requests from such individuals are less likely to justify delisting, since the public will generally have an overriding interest in finding information about them via a name-based search.<sup>8</sup>

- Individuals with **no discernable role in public life**: delisting requests for such individuals are more likely to justify delisting.
- Individuals with a **limited or context-specific role in public life** (for example, school directors, some kinds of public employees, persons thrust into the public eye because of events beyond their control, or individuals who may play a public role within a specific community because of their profession): delisting requests from such individuals are neither less nor more likely to justify delisting,<sup>9</sup> as the specific content of the information being listed is probably going to weigh more heavily on the delisting decision.

Data subjects related to individuals playing a role in public life present some interesting edge cases, as they may themselves play a role in public life which can be significant. However, in similar cases, special attention should be paid to the content of the delisting request, as the data subject's public role may be circumscribed. For example, there may be a strong public interest in information about nepotism in family hiring.

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<sup>8</sup> Marguerite Arnaud, Associate Lawways and Partners, Advisory Council Meeting Paris, 25 September 2014: "Jurisprudence states (...) that the frontier between public life and private life should be looked at differently when the person is (...) obviously part of public life. In particular for political people."

<sup>9</sup> Jędrzej Niklas, Lawyer and Activist Panoptikon Foundation, Advisory Council Meeting Warsaw, 30 September 2014: "In practice, this means that data controllers has [sic] to verify on case by case of course (...) whether the right to free expression or other rights of other individuals may prevent data subject from exercising his or her right to erase personal data."

## 4.2. Nature of the Information

### 4.2.1. *Types of information that bias toward an individual's strong privacy interest*

1. *Information related to an individual's intimate or sex life.*

In general, this information will hold increased weight of privacy rights in the balancing test against public interest. The exceptions will generally be for individuals who play a role in public life, where there is a public interest in accessing this information about the individual.<sup>10</sup>

2. *Personal financial information.*

Specific details such as bank account information are likely to be private and warrant delisting in most cases. More general information about wealth and income may be in the public interest. For example, in some countries, the salaries and properties of public employees are treated as public information; stock holdings in public companies may be of public interest; or there may be valid journalistic concerns in wealth and income information, including investigations of corruption.

3. *Private contact or identification information.*

Information such as private phone numbers, addresses or similar contact information,<sup>11</sup> government ID numbers, PINs, passwords, or credit card numbers will hold increased weight of privacy rights in the balancing test against public interest.

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<sup>10</sup> Some expert stressed that the definition of what is private changes over time. See for example: Anna Giza Poleszczuk, Professor and Vice Rector for Development and Financial Policy University of Warsaw, Advisory Council Meeting Warsaw, 30 September 2014: "Historically speaking, this relation between what is public and what is private is changing, in both ways. More and more behaviors that in historical times belonged to private sphere are now regulated by law (...) But at the same time, a lot of behaviors that were once regulated by general law now are moved to the private sphere."

<sup>11</sup> Bertrand Girin, President Reputation VIP, Advisory Council Meeting Paris, 25 September 2014: "My personal address, my telephone number are on the search engine. (...) This is what deals with the right to privacy."

4. *Information deemed sensitive under EU Data Protection law.*

Information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health, or sex life may all have specific privacy protections in Europe. However, when such data relates to the role the data subject plays in public life, there can be a strong public interest in accessing links to this information via a name-based search.

5. *Private information about minors.*

There is a special privacy consideration for children and adolescents according to the United Nations Convention on the Rights of the Child.<sup>12</sup>

6. *Information that is false, makes an inaccurate association or puts the data subject at risk of harm.*

False information or information that puts the data subject at risk of harm, such as identify theft or stalking, weighs strongly in favor of delisting.

7. *Information that may heighten the data subject's privacy interests because it appears in image or video form.*

#### 4.2.2. *Types of information that bias toward a public interest*

1. *Information relevant to political discourse, citizen engagement, or governance.*

Political discourse is strongly in the public interest, including opinions and discussions of other people's political beliefs, and should rarely be delisted.<sup>13</sup>

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<sup>12</sup> See in particular: Alan Wardle, Head of Policy and Public Affairs NSPCC, Advisory Council Meeting London, 16 October 2014: "In the offline world we have well developed laws, practices, and procedures that recognize that children need additional protection because of physical, mental, emotional development, and where they're at in their life stage."

<sup>13</sup> Javier Mieres, Counsel Council for the Statutory Rights of Catalonia, Advisory Council Meeting Madrid, 9 September 2014: "There is information which is relevant for the public interest, for self-government, for democratic participation in general, to make people capable of performing a number of activities (...)"

2. *Information relevant to religious or philosophical discourse.*

Religious and philosophical discourse is strongly in the public interest, including opinions and discussions of other people's religious and philosophical beliefs, and should rarely be delisted.

3. *Information that relates to public health and consumer protection.*

Information related to public health or consumer protection issues weighs strongly against removal. For example, reviews of professional services offered to the public at large may impact consumer safety; this value is widely recognized in the context of journalistic exceptions.<sup>14</sup> Today, sources such as individual users on social media sites often provide this type of information, more so than traditional journalistic sources.<sup>15</sup>

4. *Information related to criminal activity.*

Data relating to offences or criminal convictions warrants special treatment under EU Data Protection Law. Where specific laws relating to the processing of such data provide clear guidance, these should prevail. Where none applies, the outcome will differ depending on context. The separate considerations of severity of the crime, the role played by the requestor in the criminal activity, the recency and the source of the information (both discussed below), as well as the degree of public interest in the information at issue will be particularly relevant in assessing these cases. The evaluation of the public interest in the delistings

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<sup>14</sup> See for example the expert comment by Michaela Zinke representing the Federation of German Consumer Organizations (Advisory Council Meeting Berlin, 14 October 2014) who stressed that it matters for removal decisions if information is of interest to consumers. According to Ms Zinke, even if names are removed, information relating to a product or service must remain available as this is in the public interest.

<sup>15</sup> Matthias Spielkamp, Board Member Reporters Without Borders, Advisory Council Meeting Berlin, 14 October 2014: "Journalism can nowadays be done on a wide array of platforms (...) ranging from traditional mass media with an enormous reach and impact, like *the Guardian*, *Der Spiegel*, or *El Pais*, to personal weblogs by single citizen journalists who might not even consider themselves citizen journalists who expose government or corporate wrongdoing."

requested may differ depending on whether they concern a criminal offender or victim of a criminal offense. Information regarding human rights violations and crimes against humanity should weigh against delisting.<sup>16</sup>

5. *Information that contributes to a debate on a matter of general interest.*

The public will have an interest in accessing individual opinions and discussion of information that contributes to a public debate on a matter of general interest (for example, industrial disputes or fraudulent practice). The determination of a contribution to public debate may be informed by the source criterion, discussed below, but once information about a particular subject or event is deemed to contribute to a public debate there will be a bias against delisting any information about that subject, regardless of source.

6. *Information that is factual and true.*

Factual and truthful information that puts no one at risk of harm will weigh against delisting.

7. *Information integral to the historical record.*

Where content relates to a historical figure or historical events, the public has a particularly strong interest in accessing it online easily via a name-based search, and it will weigh against delisting.<sup>17, 18</sup> The strongest instances include links to information regarding crimes against humanity.

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<sup>16</sup> Benoît Louvet, Legal Representative International League Against Racism and Antisemitism, Advisory Council Meeting Paris, 25 September 2014: With regards to crimes against humanity "LICRA thinks that the internet plays an essential role in transmitting the memory for the future generations." (...) "The public interest in this case is extremely strong."

<sup>17</sup> See for example: Milagros del Corral, Historian and Former Director National Library of Spain, Advisory Council Meeting Madrid, 9 September 2014.

<sup>18</sup> Krzysztof Izdebski, Lawyer Citizens Network Watchdog Poland, Advisory Council Meeting Warsaw, 30 September 2014, suggested that there is a special (Eastern) European dimension to the importance of being able to access information, which relates to the Communist past. Because of the fact that information is not always credible, Izdebski noted, being able to access more information from a variety of sources is important.

8. *Information integral to scientific inquiry or artistic expression.*

In some cases, removing links from name-based search results will distort scientific inquiry; in those cases the information may carry public interest valence.<sup>19</sup> The artistic significance of content constitutes public interest and will weigh against delisting.<sup>20</sup> For example, if a data subject is portrayed in an artistic parody, it will weigh in favor of a public interest in the information.

## 4.3. Source

In assessing whether the public has a legitimate interest in links to information via a name-based search, it is relevant to consider the source of that information and the motivation for publishing it. For example, if the source is a journalistic entity operating under journalistic norms and best practices there will be a greater public interest in accessing the information published by that source via name-based searches. Government publications weigh in favor of a public interest in accessing the information via a name-based search.

Information published by recognized bloggers or individual authors of good reputation with substantial credibility and/or readership will weigh in favor of public interest. Information that is published by or with the consent of the data subject himself or herself will weigh against delisting.<sup>21</sup> This is especially true in cases where the data subject can remove the information with relative ease directly from the original source webpage, for example by deleting his or her own post on a social network.

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<sup>19</sup> See for example: Milagros del Corral, Historian and Former Director National Library of Spain, Advisory Council Meeting Madrid, 9 September 2014.

<sup>20</sup> Paul Nemitz, Director for Fundamental Rights and Union Citizenship Directorate-General for Justice European Commission, Advisory Council Meeting Brussels, 4 November 2014: "The jurisprudence say[s], one of the case groups which fall under contribution to debate in the public interest is when it pertains to performing artists. So of course the request is not justified."

<sup>21</sup> See for example: Cecilia Álvarez, Counsel Uría Menéndez, Advisory Council Meeting Madrid, 9 September 2014.

## 4.4. Time

The ruling refers to the notion that information may at one point be relevant but, as circumstances change, the relevance of that information may fade.<sup>22</sup> This criterion carries heavier weight if the data subject's role in public life is limited or has changed, but time may be a relevant criterion even when a data subject's role in public life has not changed. There are types of information for which the time criterion may not be relevant to a delisting decision—for example information relating to issues of profound public importance, such as crimes against humanity.

This criterion will be particularly relevant for criminal issues. The severity of a crime and the time passed may together favor delisting, such as in the case of a minor crime committed many years in the past.<sup>23</sup> It could also suggest an ongoing public interest in the information—for example if a data subject has committed fraud and may potentially be in new positions of trust, or if a data subject has committed a crime of sexual violence and could possibly seek a job as a teacher or a profession of public trust that involves entering private homes.

Time may also weigh on determining the data subject's role in public life. For example, a politician may leave public office and seek out a private life, or a CEO may step down from his or her role, but information about his or her time in that role may remain in the public interest as time goes on.

This criterion may also weigh toward approving delisting requests for information about the data subject's childhood.

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<sup>22</sup> At Para 94, the Ruling.

<sup>23</sup> Jodie Ginsburg, CEO Index on Censorship, Advisory Council Meeting Brussels, 4 November 2014: "The current ability of searchers to find information about individuals who have had their conviction spent is incompatible with laws about rehabilitation, such as those in the UK."

# 5. Procedural Elements

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There are five key procedural elements that are not explicitly addressed by the Ruling and on which we have chosen to give advice here.

## 5.1. Requesting to Delist Information

The search engine should make the removal request form easily accessible and intelligible to data subjects.<sup>24</sup> When requesting information be delisted, data subjects should provide enough information for the search engine to adequately evaluate the request. The data subject must also consent to the processing of this information, which should include:

- the data subject's name, nationality, and country of residence
- the name and relationship of the requester, if that person is not the data subject (for example, if that person is the attorney or parent of a minor data subject)
- motivation for the request
- requested domain(s) to which removal should be applied
- the search terms for which removal is requested (typically this is the data subject's name)
- proof of identity, and, where appropriate, representation for the limited purpose of preventing fraudulent requests

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<sup>24</sup> Bertrand Girin, President Reputation VIP, Advisory Council Meeting Paris, 25 September 2014: "Search engines would need to make their forums easy to be accessible to everybody."

- unique identifier (typically the URL) of the content for which delisting is sought
- contact information to permit continued communication regarding the request

As data subjects may be well-served by providing enough information to facilitate the public interest balancing test, the search engine should provide optional fields to accommodate such information in the request form. Additional information provided for the purposes of the balancing test may include relevant facts about the individual's role in public life, and any additional context around the content of the page at issue. It may include, for example:

- the geographic area in which the person is publicly known
- whether the person chose to adopt a role in public life, or became well-known unintentionally
- reasons why the data subject believes that his or her privacy interests should prevail over the interest of the general public in finding the information concerned upon a search relating to the data subject's name

We recommend that the search engine should improve its request form as indicated in this section 5.1.

## 5.2. Notifying Webmasters of a Delisting

In our public consultations, representatives from the media expressed concerns that delisting decisions could severely impact their rights and interests. To mitigate these potential harms,<sup>25</sup> the aforementioned representatives suggested that they should receive notice of any delistings applied to information they had published.<sup>26</sup>

However, some experts argued that notifying webmasters may adversely impact the data subject's privacy rights if the webmaster is able to discern either from the notice itself or indirectly who the requesting data subject is.<sup>27</sup>

The Council also received conflicting input about the legal basis for such notice. Given the valid concerns raised by online publishers, we advise that, as a good practice, the search engine should notify the publishers to the extent allowed by law.

Furthermore, in complex cases, it may be appropriate for the search engine to notify the webmaster prior to reaching an actual delisting decision. In some cases this may be challenging to implement but, if feasible, it would have the effect of providing the search engine additional context about the information at issue and improve accuracy of delisting determinations.<sup>28</sup>

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<sup>25</sup> See for example: Matthias Spielkamp, Board Member Reporters Without Borders, Advisory Council Berlin, 14 October 2014.

<sup>26</sup> See for example: Montserrat Domínguez, Director Spanish Edition of The Huffington Post, Advisory Council Meeting Madrid, 9 September 2014; Bertrand de la Chapelle, Director Internet & Jurisdiction Project, Advisory Council Meeting Paris, 25 September 2014; Dorota Głowacka, Lawyer Helsinki Foundation for Human Rights, Advisory Council Meeting Warsaw, 30 September 2014; and Hielke Hijmans, Associated Researcher Free University Brussels & University of Amsterdam, Advisory Council Meeting Brussels, 4 November 2014.

<sup>27</sup> Julia Powles, Researcher in Law & Technology University of Cambridge, Advisory Council Meeting London, 16 October 2014: "I think that it is inconsistent with Google's obligations as a data processor or individuals information in making a request to pass that information on without a disclaimer." See also: Niko Härting, Lawyer HÄRTING Rechtsanwälte, Advisory Council Berlin, 14 October 2014.

<sup>28</sup> Chris Moran, Digital Audience Editor the Guardian, Advisory Council Meeting London, 16 October 2014: "The context [a publisher] could offer preremoval is in fact essential to Google making a far more balanced decision in each case."

## 5.3. Challenging a Delisting Decision

The search engine is responsible, as the Ruling specifies,<sup>29</sup> for deciding whether or not to delist information at the request of a data subject.

Many people have questioned whether it is appropriate for a corporation to take on what may be otherwise considered a judicial role.<sup>30</sup> However, assessing legal removal requests is already the norm for, and expected behavior of, search engines and other intermediaries in contexts outside data protection.<sup>31</sup>

Data subjects can challenge delisting decisions before either their local DPAs or courts. Because delisting affects the rights and interests of publishers, many experts suggested, and we agree,<sup>32</sup> that publishers should have means to challenge improper delistings before a DPA or a similar public authority.<sup>33</sup>

## 5.4. Geographic Scope for Delisting

A difficult question that arose throughout our meetings concerned the appropriate geographic scope for processing a delisting. Many search

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<sup>29</sup> At Para 94, the Ruling.

<sup>30</sup> Milagros del Corral, Historian and Former Director National Library of Spain, Advisory Council Meeting Madrid, 9 September 2014: “In my opinion defining concepts towards an updated interpretation of those legal instruments is something up to the judiciary powers at the national level, or at the European level if you prefer. But and it’s not up to a private company such as Google and other search engines that are also, I understand, affected by this sentence. (...) Google of course has to comply with this sentence, but definitely needs clearer guidance—clearer official guidance—to do so (...)”

<sup>31</sup> Evan Harris, Associate Director Hacked Off, Advisory Council Meeting London, 16 October 2014: “Now sometimes Google is quite happy to unindex results when it suits it. So it has made a decision commercially that it wants to abide by copyright law. So it delinks millions—not just tens of thousands or hundreds of thousands—but millions of pages without bleating about it, because it’s deemed that it’s right to comply with that law. And indeed when it comes to images of child abuse, quite rightly and no one would argue with this, it delinks to those as well. And there may be other local laws that it chooses to comply with. So it’s not a new concept.”

<sup>32</sup> Guido Scorza, Lawyer Scorza Riccio & Partners, Advisory Council Meeting Rome, 10 September 2014: “I believe that the freedom of expression which we exercise online is not having only regard to the content, but also with the modalities through which the publisher, the blogger, the journalist, the user of a platform of journalistic content decides to publish and to disseminate content.”

<sup>33</sup> Bertrand de la Chapelle, Director, Internet & Jurisdiction Project, Advisory Council Meeting Paris, 25 September 2013: “DPAs, by virtue of their mandate, are in charge of the protection of individual’s privacy, which is one, but only one, of the principles that have to be balanced.”

engines operate different versions that are targeted to users in a particular country, such as google.de for German users or google.fr for French users. The Ruling is not precise about which versions of search a delisting must be applied to. Google has chosen to implement these removals from all its European-directed search services, citing the CJEU's authority across Europe as its guidance.

The Council understands that it is a general practice that users in Europe, when typing in www.google.com to their browser, are automatically redirected to a local version of Google's search engine. Google has told us that over 95% of all queries originating in Europe are on local versions of the search engine. Given this background, we believe that delistings applied to the European versions of search will, as a general rule, protect the rights of the data subject adequately in the current state of affairs and technology.

In considering whether to apply a delisting to versions of search targeted at users outside of Europe, including globally, we acknowledge that doing so may ensure more absolute protection of a data subject's rights.<sup>34</sup> However, it is the conclusion of the majority that there are competing interests that outweigh the additional protection afforded to the data subject. There is a competing interest on the part of users outside of Europe to access information via a name-based search in accordance with the laws of their country, which may be in conflict with the delistings afforded

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<sup>34</sup> Pablo Lucas Murillo, Supreme Court Magistrate, Advisory Council Meeting Madrid, 9 September 2014: "(...) if it is considered that the individual is entitled to the removal of the links, I think this should be applicable to all other versions of whatever search engine has been used. It would make no sense to not have access to that information in Europe, but having access to it in the US for obvious reasons. We live in a globalized world." See also: Paul Nemitz, Director for Fundamental Rights and Union Citizenship European Commission, Advisory Council Meeting Brussels, 4 November 2014. And: Hielke Hijmans, Associated Researcher Free University Brussels & University of Amsterdam, Advisory Council Meeting Brussels, 4 November 2014.

by the Ruling.<sup>35</sup> These considerations are bolstered by the legal principle of proportionality and extraterritoriality in application of European law.

There is also a competing interest on the part of users within Europe to access versions of search other than their own.<sup>36</sup> The Council heard evidence about the technical possibility to prevent Internet users in Europe from accessing search results that have been delisted under European law.<sup>37</sup> The Council has concerns about the precedent set by such measures, particularly if repressive regimes point to such a precedent in an effort to “lock” their users into heavily censored versions of search results. It is also unclear whether such measures would be meaningfully more effective than Google’s existing model, given the widespread availability of tools to circumvent such blocks.

The Council supports effective measures to protect the rights of data subjects. Given concerns of proportionality and practical effectiveness, it concludes that removal from nationally directed versions of Google’s search services within the EU is the appropriate means to implement the Ruling at this stage.

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<sup>35</sup> Robert Madelin, Director General DG CONNECT European Commission, Advisory Council Meeting Brussels, 4 November 2014: “There are geographical and chronological variations in our expectations of the internet, firstly, the statute of limitations as a matter of law, varies jurisdiction by jurisdiction and in societies.”

<sup>36</sup> Igor Ostrowski, Partner Dentons & Head of TMT Sector Group in Europe, Advisory Council Meeting Warsaw, 30 September 2014: “One way to ensure that [the] disintegration of the internet does not happen is to limit the scope of the removal request to a local version at issue.”

<sup>37</sup> Hielke Hijmans, Associated Researcher Free University Brussels & University of Amsterdam, Advisory Council Meeting Brussels, 4 November 2014: “I think Google—but I’m not Google— is perfectly capable, to separate, to ensure, that this deletion only takes place where Google is accessed from European territory. I think that’s technically not a problem.”

## 5.5. Transparency

The issue of transparency concerns four related but distinguished aspects: (1) transparency toward the public about the completeness of a name search; (2) transparency toward the public about individual decisions; (3) transparency toward the public about anonymised statistics and general policy of the search engine; and (4) transparency toward a data subject about reasons for denying his or her request.

With regard to (1) and (2), in general it is our view that the decision to provide notice to users that search results may have been subject to a delisting is ultimately for the search engine to make, as long as data subjects' rights are not compromised. In other words,<sup>38</sup> notice should generally not reveal the fact that a particular data subject has requested a delisting.

With regard to (3), we recommend the search engine to be as transparent as it is possible within the legal limits and the protection of the data subjects' privacy, e.g. through anonymised and aggregated statistics and references to adopted policies, and in any case never by referring to individual decisions. Search engines should also be transparent with the public about the process and criteria used to evaluate delisting requests.

With regard to (4), some experts suggested that Google is also responsible for providing a detailed explanation of its decisions, and we agree this should be a best practice.<sup>39</sup> In our view what is important is that Google makes publicly available its guidelines on the kinds of requests likely to be honored, and to the extent possible anonymized statistics about decisions, so data subjects can weigh the benefits of submitting the request.

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<sup>38</sup> Alejandro Perales, President Communication Users Association, Advisory Council Meeting Madrid, 9 September 2014: "The information to be provided to citizens regarding the removal or deletion of certain contents should be complete enough and general enough so as not to violate the rights to privacy."

<sup>39</sup> Emma Carr, Director Big Brother Watch, Advisory Council Meeting London, 16 October 2014: "I think the most important thing that we see is an incredibly transparent system that's coming from Google and other intermediaries as to how they're going to apply this, and in what cases it has been applied (...) because we don't want this to be a case where the public think that this is somewhat now of a free for all, which, in case, of course, it's not."

# Appendix

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- Comments from Individual Council Members
- List of experts whose evidence was heard at each consultation
- Transcripts of public consultations
- Alternative ideas and technical proposals we heard for an adjudication process

## Comments from Individual Council Members

Each member of the Advisory Council had the right to add a dissenting opinion in which to express personal criticisms or points of disagreement with the final version of the report. The interactions with local experts and our internal discussions were extremely insightful and enriching, and took place with much respect for divergent views, which we tried to capture and reconcile in the report submitted. In order to preserve the spirit of compromise that has been sought carefully amongst the eight external experts of the advisory group, the following members have decided not to exercise their right to add a dissenting opinion:

Luciano Floridi

Peggy Valcke

Sylvie Kauffman

# Comments on the report on the Right to be Forgotten

*Shared by José-Luis Piñar and Lidia Kolucka-Zuk, Members of the Google Advisory Council*

## **General comments:**

The development of the work the Advisory Council has carried out has allowed us to analyze the the implications of the Judgment by the Court of Justice of the European Union of 13th May 2014 within a framework of frank, open debate among all its members. Moreover, the help provided by the national experts we were able to hear at the sessions held in the diverse cities of the European Union has been highly enlightening.

Congratulations are due for the fact of the Final Report emphasizing the importance of data protection as a fundamental right, and the need to seek a balance with other rights, such as the freedom of expression and information.

However, we consider that some points of the Report include some considerations or even examples that could generate some doubts regarding the legal position on data protection. We refer to two of these below:

## **Comments on the text of the report:**

1. On page 11, in point 4.2.2: (2) Information relevant to religious or philosophical discourse.

We believe it would have been better not to include this section. In any event, and at least, in this case the report should reference the fact that the data on religious or philosophical beliefs are sensitive data, as was underlined above in point 4.2.1.

2. On page 13, in point 4.2.2 (8), our view the only time in which a data subject portrayed as artistic parody weighs in favor of public interest is when that data subject is a public figure. We do not believe that a parody of a “normal person”, who may be identified on the basis of his or her name, should be considered of general public interest.

## Comments on the report on the Right to be Forgotten

*Sabine Leutheusser-Schnarrenberger, Member of the Google Advisory Council*

### **General comments:**

1. The ruling of the CJEU concerning the so called Right to be Forgotten (RTBF ) opens new perspectives with regard to responsibilities in the digital era. In the past only journalists, publishers, editors and webmasters were responsible for the content of their texts, online and offline. Today — according to the new ruling — also operating authorities of search engines are committed to control the dissemination of information. The users can now lay claim against the search engines on deleting links to articles provided their right to privacy or their right to protect their personal data is violated. It affects name based research in particular.

2. Thus the ruling is based on the enormous possibilities of spreading information by search engines to millions of people without any restriction regarding time. The violation of personal data reaches a new dimension and intensity. It cannot be compared to publications of local newspapers which

have approximately 10,000 – 50,000 issues. Users should get a second chance after a economic failure ( insolvency ) or after a conviction.

3. This new ruling strengthens the user's general position. This requires specific prerequisites, which are dealt with in the report.

4. It is of paramount importance to achieve an appropriate balance between the user's rights in particular their right to privacy and protection of personal data – and the right to freedom of expression and to receive and impart information.

5. The ruling does not evaluate all legal questions with regard to RTBF. This applies in particular the attitudes of search engines to notifying the webmaster in question about the deletion of a link and to informing the public about the deletion. If the authorities of search engines intend to notify webmasters and all users it must be allowed by law provided that there are references to the data subject.

6. The search engine is the responsible body to decide on the removal request. This is a typical relationship between a private user on the one hand, who requests the removal and a private company on the other hand, which is entitled to decide whether it grants or denies the request. This right to decide cannot be taken away from the company. The experts proposed several interesting ideas to improve the procedure and the technical tools. In the wake of manifold interests in this matter I can imagine to create a kind of arbitration procedure aiming at achieving a commonly agreed result in complex cases. The procedures should be voluntarily. The arbitration body has to be completely independent. The Data Protection Authorities can deliver their own statement on this case, but they are not part of the

arbitration process. I recommend to launch a European legal basis in the future, which comprises all aspects of such arbitration procedure. This point in question has always been discussed by experts in our hearings.

7. This ruling and its implementation provoke a lot of new challenges. Therefore all participants in this process have to gather experience in order to find a basis for new rules and regulations in the near future. This would specify the Art. 17 in the topical draft of a new European Data Protection Directive. In my view this is the most effective way to guarantee a practice, which must be accepted by all authorities of search engines.

I would like to thank all members of the Advisory Board for their way communicating controversial issues. We saw ourselves confronted with completely new questions on the background of a digital development which is characterized by a rapid dynamism. Our exchange of ideas was accompanied by the knowledge and experience of experts from various disciplines. It helped me to form and develop my own views on a very complex matter. These experts meant a great help and deserve recognition. I also would like to thank the Google team for its great support organizing and moderating our consultations.

### **Specific comments on the text of the report:**

#### Section 5.4 Geographic Scope of Delisting

I do not share the opinion of the majority of the Council Members in this point, laid down in paragraph 3.

The ruling does not expressly refer to the geographic scope of the removal request. According to my opinion the removal request comprises all domains, and must not be limited to EU-domains. This is the only way to

implement the Court's ruling , which implies a complete and effective protection of data subject's rights. The internet is global, the protection of the user's rights must also be global. Any circumvention of these rights must be prevented. Since EU residents are able to research globally the EU is authorized to decide that the search engine has to delete all the links globally. So far I share the guidelines published by Article 29 Data Protection Working Party.

## Comments on the report on the Right to be Forgotten

*Jimmy Wales, Member of the Google Advisory Council*

This report is a good faith effort under the limiting circumstance of the confused and selfcontradictory European Law to make recommendations to Google on compliance with that law. I am happy that the report explicitly notes "the Ruling does not establish a general Right to be Forgotten".

I completely oppose the legal situation in which a commercial company is forced to become the judge of our most fundamental rights of expression and privacy, without allowing any appropriate procedure for appeal by publishers whose works are being suppressed. The European Parliament needs to immediately amend the law to provide for appropriate judicial oversight, and with strengthened protections for freedom of expression. Until this time, the recommendations to Google contained in this report are deeply flawed due to the law itself being deeply flawed.

# Comments on the report on the Right to be Forgotten

*Frank La Rue, Member of the Google Advisory Council*

## **General comments:**

The right to privacy and to data protection is a fundamental right intimately linked to the exercise of the right to freedom of expression, and they should be understood as complementary and never in conflict with each other. The right to be forgotten, as such, does not exist and what we should be discussing in the interpretation of the ruling of the CJEU is whether privacy is reached by those engines or not, and when.

The decision of any authority to delete information or to block search engines can only be based in the fact that the form of obtaining such information or the content of such is malicious, is false, or produces serious harm to an individual.

We cannot make a difference between the information that exists, on files, official records or news papers, and that is obtained through a search engine.

## **Human Rights**

In the case of human rights, one of the fundamental principles to eradicate impunity is to establish the truth of human rights violations when they exist, and this is recognized as the right to truth of the victims and their families but also to society as a whole to reconstruct historical memory, to memorialize the victims of the past. In my report to the General Assembly in 2013 I proposed that access to all information related to human rights violations

should be a priority and that access to official sources of information and files could never be denied in the case of human rights violations, not only as a right of the victims and society as a whole, but also to guarantee the “principle of non-repetition.”

In the case of criminal law, several countries in Europe have statued the limitation to delete information related to a convicted person who has concluded their prison term or punishment. I believe this is valid for reintegration of individuals to society, except in the cases where the criminal activity constituted human rights violations, and particularly crimes against humanity, when it is of public interest to never delete such information.

### **Procedural Aspects**

In this case the CJEU ordered Google to take action or delinking of some information in their search engine, and to establish a procedure for such requests, which is why Google has gone through this exercise of consultation. But in this topic I must remind that the protection of Human Rights is a responsibility of the State, and in the cases where there can be limitations to the exercise of a right to prevent harm or violation of other rights or a superior common interest of society, it is the State that must make the decision. Therefore I believe it should be a State authority that establishes the criteria and procedures for protection of privacy and data and not simply transferred to a private commercial entity.

# List of experts whose evidence was heard at each consultation

## *Madrid, 9 September 2014:*

1. Cecilia Álvarez, *Counsel - Uría Menéndez*
2. Alberto Iglesias Garzón, *Senior Project Manager - Fundación Gregorio Peces-Barba for Human Rights*
3. Milagros del Corral, *Historian and Former Director - National Library of Spain*
4. Javier Mieres, *Counsel - Council for the Statutory Rights of Catalonia*
5. Alejandro Perales, *President - Communication Users Association*
6. Pablo Lucas Murillo, *Supreme Court Magistrate*
7. Juan Antonio Hernández, *Counsel - Constitutional Court*
8. Montserrat Domínguez, *Director - Spanish Edition of The Huffington Post*

## *Rome, 10 September 2014:*

1. Guido Scorza, *Lawyer - Scorza Riccio & Partners*
2. Massimo Russo, *Editor in Chief - Wired Italia*
3. Gianni Riotta, *Writer and Columnist*
4. Lorella Zanardo, *Writer and Activist*
5. Alessandro Mantelero, *Professor of Private Law - Polytechnic University of Turin*
6. Elio Catania, *President - Confindustria Digitale*
7. Oreste Pollicino, *Associate Professor of Public Law - Bocconi University*
8. Vincenzo Zeno-Zencovich, *Professor in Comparative Law - Roma Tre University*

### *Paris, 25 September 2014:*

1. Serge Tisseron, *Research Fellow - Paris Diderot University*
2. Benoît Louvet, *Legal Representative - International League Against Racism and Antisemitism (LICRA)*
3. Emmanuel Parody, *General Secretary - French Online Publishers' Association (GESTE)*
4. Bertrand Girin, *President - Reputation VIP*
5. Marguerite Arnaud, *Associate - Lawways and Partners*
6. Céline Castets-Renard, *Professor of Law - University of Toulouse*
7. Bertrand de la Chapelle, *Director, Internet & Jurisdiction Project*
8. Laurent Cytermann, *Deputy Rapporteur General - Council of State*

### *Warsaw, 30 September 2014:*

1. Igor Ostrowski, *Partner - Dentons & Head of TMT Sector Group in Europe*
2. Edwin Bendyk, *Journalist - "Polityka"*
3. Magdalena Piech, *Lawyer - Lewiatan Chamber of Commerce*
4. Anna Giza-Poleszczuk - *Professor and Vice Rector for Development and Financial Policy - University of Warsaw*
5. Jędrzej Niklas, *Lawyer and Activist - Panoptykon Foundation*
6. Jacek Szczytko, *Faculty of Physics - University of Warsaw*
7. Dorota Głowacka, *Lawyer - Helsinki Foundation for Human Rights*
8. Krzysztof Izdebski, *Lawyer and Expert - Citizens Network Watchdog Poland*

### *Berlin, 14 October 2014:*

1. Michaela Zinke, *Policy Officer - Federation of German Consumer Organizations*
2. Matthias Spielkamp, *Board Member - Reporters Without Borders*
3. Susanne Dehmel, *Head of Privacy Department - Bitkom e.V.*
4. Niko Härting, *Lawyer - HÄRTING Rechtsanwälte*
5. Moritz Karg, *Commissioner for Data Protection - Hamburg Data Protection Authority*
6. Ulf Buermeyer, *Judge and Constitutional Law Expert - Court of Berlin*
7. Christoph Fiedler, *Lawyer - Association of German Magazine Publishers*
8. Lorena Jaume-Palasi, *Coordinator - Global Internet Governance Working Group*

### *London, 16 October 2014:*

1. Emma Carr, *Director - Big Brother Watch*
2. David Jordan, *Director of Editorial Policy & Standards - BBC*
3. Gabrielle Guillemin, *Senior Legal Officer - ARTICLE 19*
4. Evan Harris, *Associate Director - Hacked Off*
5. Chris Moran, *Digital Audience Editor - the Guardian*
6. Julia Powles, *Researcher in Law & Technology - University of Cambridge*
7. Alan Wardle, *Head of Policy and Public Affairs - NSPCC*

### *Brussels, 4 November 2014:*

1. Patrick Van Eecke, *Partner and Head of Internet Law Group - DLA Piper*
2. Stéphane Hoebeke, *Legal Counsellor - RTBF*

3. Karel Verhoeven, *Editor in Chief - De Standaard*
4. Robert Madelin, *Director General DG CONNECT - European Commission*
5. Hielke Hijmans, *Associated Researcher - Free University Brussels (VUB) & University of Amsterdam*
6. Jodie Ginsburg, *CEO - Index on Censorship*
7. Paul Nemitz - *Director for Fundamental Rights and Union Citizenship, Directorate-General for Justice European Commission*
8. Philippe Nothomb, *Legal Advisor - Rossel Group*

# Alternative ideas and technical proposals we heard for an adjudication process

Several experts commented that DPAs alone may lack the expertise, formal role, or orientation to grant equivalent rights or remedies to publishers whose Article 10 rights to freedom of expression may have been compromised by a decision reached by a search engine. On the basis of these observations,<sup>40</sup> we heard several suggestions for an ideal referral and review process. Some of these would appear to require legislative change in order to be put into effect:

- Different search engines should collaborate to standardize the removal process and provide a single, efficient, and effective interface for data subjects requesting removals.<sup>41</sup> Taking this idea one step further, we think it would be worthwhile for search engines to consider jointly funding an arbitration board.
- Provide publishers notice and opportunity to challenge delisting decisions through a model on the procedural fairness rules from criminal or civil procedure.<sup>42</sup>

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<sup>40</sup> Dorota Głowacka, Lawyer Helsinki Foundation for Human Rights, Advisory Council Meeting Warsaw, 30 September 2014: [regarding what independent oversight should look like in practice, while the DPA would be best in the Costeja case] "(...) I'm not quite sure if that's the best person to actually assess and resolve the conflict between the right to privacy and the freedom of expression."

<sup>41</sup> Emma Carr, Director Big Brother Watch, Advisory Council Meeting London, 16 October 2014: "The idea of a common framework or removals list that can be shared between search engines should seriously be considered. And it's important that the ruling, however imperfect, is interpreted and applied on a consistent basis. Both of these tools can be used to establish a common best practice system in order to speed up the process and to ensure that each request is treated effectively and fairly."

<sup>42</sup> Ulf Buermeyer, Judge and Constitutional Law Expert, Advisory Council Meeting Berlin, 14 October 2014: "If Google is really implementing some kind of court, then I think it should really take up the challenge and implement some procedural rules that courts have come to adopt over the centuries. And the most important rule in this respect would in my view be that Google should implement some kind of fair trial in balancing interests."

Elio Catania, President Confindustria Digitale, Advisory Council Meeting Rome, 10 September 2014: "This requires, in my view, a clear definition, as much as we can, of an objective set of rules, criteria, grades to avoid uncertainties as management, and creating instead a transparent and firm environment for people and citizens. It's a complex task. There are several dimensions, which have to be crossed: (...) (e.g.) the intersection with the laws, with the local laws."

- Define classes of manifestly unlawful content that presumptively are delisted upon request, and classes that are presumptively not delisted without DPA review.
- If publishers receive notice, give them a shorter window to object to delistings that are manifestly unlawful or for trivial content than for those delisting where a case is made for public interest.<sup>43</sup>
- Sequence reviews—for example, requiring review by the publisher first, search engine second, DPA third, and a court as a final adjudicative mechanism—and ensure that grounds for decision are articulated at each stage. The Council heard a number of procedural suggestions to achieve an ideal adjudication mechanism for these delisting requests.<sup>44</sup>
- Delist automatically for all complaints.<sup>45</sup>
- Reinstate delisted material by default if the publisher challenges the removal, until a resolution of the challenge is reached.<sup>46</sup>

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<sup>43</sup> David Jordan, Director of Editorial Policy & Standards BBC, Advisory Council Meeting London, 16 October 2014: “I think in theory it would be possible for a search engine to say to a publisher when they get in touch predecision to say, we, in our view, this is a trivial case, and we intend to remove (...) the links to this within the next 36 hours unless we hear back from you to the contrary. And then on things that were more difficult, to take the view that we would have a little bit more time to allow you to respond in case there are things that are relevant to the decision that we’re about to make. (...) It’s always then possible for a publisher to come back and say, well actually we don’t think this is a trivial case.”

<sup>44</sup> David Jordan, Director of Editorial Policy & Standards BBC, Advisory Council Meeting London, 16 October 2014: “I would welcome a sequential approach (...), that was publisher first, search engine, and then through the legal process if that was required. I’d welcome that. But I think that at each stage, the previous stage should know what the ruling was and why in order to make sure that if it did get to the search engine, say, from the publisher, you were well-aware of what all the facts of the case were or why the decisions being made have been made. I think that would make things a lot simpler.” Lorena Jaume-Palasi, Coordinator Global Internet Governance Working Group, Advisory Council Meeting Berlin, 14 October 2014. Ms Jaume-Palasi suggested a three phase removal procedure: 1) a right of correction, 2) assessment by an independent jury (consisting of voluntary users, DPA, and consumer protectors), and 3) arbitration.

<sup>45</sup> Alberto Iglesias Garzón, Senior Project Manager Fundación Gregorio PecesBarba for Human Rights, Advisory Council Meeting Madrid, 9 September 2014: “(...) the sentence allows Google to decide if they want to erase all the links automatically or to give them the opportunity to evaluate them.”

<sup>46</sup> Magdalena Piech, Lawyer Lewiatan Chamber of Commerce, Advisory Council Meeting Warsaw, 30 September 2014: “If the publisher objects the removal and we could say that the objection is well-founded, in principle the search engine should refuse the link to be removed. In such a case, it should of course inform data subject about the possibility to refer the case to data protection authorities (...) maybe a fast-track procedure could be invented upon the let’s say the data protection authority—but probably not only—for that purpose.”

- Establish a clear channel of appeal to a public authority for publishers seeking vindication of Article 10 rights, parallel to data subjects' right of appeal to DPAs for Article 8 rights.<sup>47</sup>
- Establish a public mediation model, in which an independent arbitration body assesses removal requests.<sup>48</sup> Several experts suggested this to be modeled on the process for resolving domain name disputes.<sup>49</sup>

These suggestions also touched on technical tools that might be developed to assist in managing the process. These included:

- a process for demoting links rather than delisting them from search results against a query altogether.<sup>50</sup>

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<sup>47</sup> David Jordan, Director of Editorial Policy & Standards BBC, Advisory Council Meeting London, 16 October 2014: "[We welcome Google giving publishers notice of removals.] But unfortunately, the usefulness of this approach has been circumscribed by the lack of a formal appeal process, the lack of information about the nature of the request to unsearch or the origin of it, the lack of information about the search terms which are being disabled." Gabrielle Guillemin, Senior Legal Officer - Article 19, Advisory Council Meeting London, 16 October 2014: "We think that it's absolutely crucial that the data publisher is informed that a request has been made, so that they can put their case to the data controller when looking at making a decision on any particular request. And if that decision is that the search results should be delisted in relation to a particular name, then the data publisher should have an opportunity to appeal that decision to a data protection authority, or ideally the courts or adjudicatory body directly. We think it's absolutely essential, and not just a matter of good practice."

<sup>48</sup> Massimo Russo, Editor in Chief Wired Italia, Advisory Council Meeting Rome, 10 September 2014: "The rights to remove content from the search engine indexes should be established by a public subject after hearing all the interested parties." Elio Catania, President Confindustria Digitale, Advisory Council Meeting Rome, 10 September 2014: "Only an official, independent institution can define what are the matters of general interest."

Patrick Van Eecke, Partner and Head of Internet Law Group DLA Piper, Advisory Council Meeting Brussels, 4 November 2014: "It's not Google who should decide about whether or not to remove a link from the search results. I think it should be independent arbitration body consisting of a pool of a few hundreds of panelists maybe."

<sup>49</sup> Laurent Cytermann, Deputy Rapporteur General Council of State, Advisory Council Meeting Paris, 25 September 2014: "For example, in a domain name, where there's some kind of conflict there, in France, there's a system of mediation which works with the Chamber of Commerce in Paris. And it's a system that can be had recourse to. And it's more appropriate than having recourse to judges." See also: Patrick Van Eecke, Partner and Head of Internet Law Group DLA Piper, Advisory Council Meeting Brussels, 4 November 2014.

<sup>50</sup> Alberto Iglesias Garzón, Senior Project Manager Fundación Gregorio PecesBarba for Human Rights, Advisory Council Meeting Madrid, 9 September 2014: "Under request, Google may shift the link in question to a deeper place far from the first results. Far from the first page where, of course, it could be much more detrimental for the individual." See also: Jacek Szczytko, Faculty of Physics University of Warsaw, Advisory Council Meeting Warsaw, 30 September 2014.

- automatic expiry for posted content.<sup>51</sup>
- automatic revival of delisted content after a given period of time, in a way comparable to an embargo period for classified documents in archives.
- extensions to the robots.txt standard:
  - to allow webmasters to suppress pages for specified search query terms.
  - to specify how search engines can notify webmasters of removals.<sup>52</sup>
- a mechanism for posting responses or corrections to inadequate, irrelevant, inaccurate or outdated information.<sup>53</sup>

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<sup>51</sup> Edwin Bendyk, Journalist, Advisory Council Meeting Warsaw, 30 September 2014: “[The automatic deleting information is] an interesting idea. This is known from the legal system, where the sentences, for instance, expire. Sometimes automatically after 10 years, if I don’t decide otherwise, an information stops to be valid (...)” In this context, Mr Bendyk referred to the book ‘Delete: The Virtue of Forgetting in the Digital Age’ by Viktor Mayer-Schönberger (Princeton University Press, 2011).

<sup>52</sup> Ulf Buermeyer, Judge and Constitutional Law Expert, Advisory Council Meeting Berlin, 14 October 2014: “Just imagine another command in this robots.txt, which specifies a URL where Google can post information about deletion requests. And then Google just submits some kind of JSON, for example, detailing the deletion request. And then the operator of the web server could handle this information in any way he or she deems appropriate. This would alleviate the burden for Google to search for some contact information. Just send it to the web server, because it’s the web server where the deletion request is.” Philippe Nothomb, Legal Advisor Rossel Group, Advisory Council Meeting Brussels, 4 November 2014: “And the suppression of information is not a solution. We feel that one needs to add new data, which may be correcting or giving more precision to already existing data.”

<sup>53</sup> Magdalena Piech, Lawyer Lewiatan Chamber of Commerce, Advisory Council Meeting Warsaw, 30 September 2014: “[redacted] It is important to underline that, upon receiving information that the content of the website is questioned, the publisher could also decide to update or complement the information at the source website... It should be stressed that, with regard to online publications, courts seem to follow this direction, and consider that it is more appropriate to update or complement the information than simply to delete it as if we were to cut information out from the newspaper.” Vincenzo Zeno-Zencovich, Professor in Comparative Law Roma Tre University, Advisory Council Meeting Rome, 10 September 2014: “There’s an interesting decision by (...) the Italian Corte di Cassazione, which says that (...) this news [information concerning judicial affairs] should be updated. There’s a duty to update.”

# About the Advisory Council Members

**Luciano Floridi** is Professor of Philosophy and Ethics of Information at the University of Oxford, Senior Research Fellow and Director of Research at the Oxford Internet Institute, and Governing Body Fellow of St Cross College, Oxford. He is also Adjunct Professor, Department of Economics, American University, Washington D.C. His main areas of research are the philosophy of information, the ethics of information, computer ethics, and the philosophy of technology. Among his most recent recognitions, he has been awarded a Fernand Braudel Senior Fellowship by the European University Institute and the Cátedras de Excelencia Prize by the University Carlos III of Madrid.

**Sylvie Kauffmann** is editorial director at the French newspaper Le Monde. She was the editor-in-chief of the paper in 2010-2011. She joined Le Monde in 1987 as Moscow correspondent. From 1988 to 1993, she covered, as Eastern and Central Europe correspondent, the collapse of the Soviet empire and the transition of new European democracies to market economy. She then moved to the United States, first as Washington correspondent and then, from 1996 to 2001, as New York Bureau Chief. Back in Paris just before September 11, she went back to the US several times to cover the aftermath of the attacks. She then headed the in-depth reporting section of Le Monde and became one of the deputy editors of the paper. From 2006 to 2009, she was reporter-at-large in Asia, based in Singapore, and wrote a weekly column on Asia. Sylvie is a contributing writer for the International New York Times Opinion section. She is a graduate of the Faculté de Droit (Law School) de l'université d'Aix-en-Provence and from the Institut d'Etudes Politiques (Aix-en-Provence). She holds a degree in Spanish from Deusto University in Bilbao, Spain. She also graduated from the

Centre de Formation des Journalistes (School of Journalism) in Paris. She is married and has two sons.

**Lidia Kolucka-Zuk** served as Executive Director for the Warsaw-based Trust for Civil Society in Central and Eastern Europe. She is a lawyer by training and has worked as a strategic advisor to the Polish Prime Minister on issues of state efficiency, reforms in the judicial and legal sectors and the creation of digital society in Poland. Lidia is a Yale World Fellow 2013 at Yale University.

**Frank La Rue** has 35 years of experience working for human rights, political analysis and democratic development; violence prevention, conflict management, negotiation and resolution. His experience includes Founder and Director of a non-governmental human rights organization which filed cases before the Inter American Human Rights Commission and Court, Presidential Secretary for Human Rights in Guatemala, and Advisor to the Foreign Ministry. Frank is a UN Special Rapporteur for the Promotion and Protection of the Right to Freedom of Opinion and Expression of the UNHRC.

**José-Luis Piñar** is Doctor in Law. Former Director of the Spanish Data Protection Agency (2002-2007). Former Vice-Chairman of the European Group of Data Protection Commissioners (“Art. 29 Working Party Data Protection”) (2003-2007), Founder (2003) and former President of the Ibero-American Data Protection Network (2003-2007). Professor of Administrative Law, and Vice-Rector of International Relations at San Pablo-CEU University of Madrid. Founding partner at Piñar Mañas & Asociados Law Firm. He has published numerous works on data protection law including social networks and children’s privacy, and ECJ case law on the right to protection of per-

sonal data, in “BNA International. World Data Protection Report.” José-Luis was a member of the Expert’s Commission created by the Spanish Government for studying and analysing the Spanish Draft of Transparency and Access to Public Information Law. Is member of the International Association of Privacy Professionals. Awards include the “San Raimundo de Peñafort” from the Spanish Royal Academy of Jurisprudence and Law, and the “Cruz de Honor de San Raimundo de Peñafort” from the Spanish Government.

**Sabine Leutheusser-Schnarrenberger** has been a member of the German parliament for over 23 years and has served as the German Federal Justice Minister for a total of 8 years. As a member of the Parliamentary Assembly on the Council of Europe for 7 years, she was intensively engaged in defending and protecting human rights—including the right to privacy, laid down in the European Convention on Human Rights as well as in UN conventions.

**Peggy Valcke** is research professor at KU Leuven in Belgium, part-time professor at the European University Institute in Florence, Italy, and visiting professor at the University of Tilburg in the Netherlands. Her areas of expertise include legal aspects of media innovation, media pluralism, and the interaction between media/telecommunications regulation and competition law. In previous years, she has been involved in over 30 research projects, funded by the European Commission, BOF, IWT, FWO, iMinds, national authorities and regulators. Among other topics her research has addressed media power, user-generated content, internet regulation, mobile and online television, e-publishing and online journalism, public service broadcasting and state aid, co- and self-regulation in the media, privacy in electronic communications and social networks.

**Jimmy Wales** is Founder and Chair Emeritus, Board of Trustees, Wikimedia Foundation, the non-profit corporation that operates the Wikipedia free online encyclopaedia and several other wiki projects. Founder, Wikia.com. Named one of 100 Most Influential People in the World, Time Magazine (2006). In 2014 was appointed Co-Chairman of The People's Operator, a UK based mobile operator that enables the user to donate 10 percent of their phone bill to a cause of their choice without paying more for their phone plan. Wales is currently living in London.