Committee of Ministers: Recommendation on the Protection of Human Rights and Search Engines

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On 4 April 2012, the Committee of Ministers of the Council of Europe issued a recommendation to the member states on the protection of human rights with regard to search engines.

The recommendation acknowledges the importance of search engines in the online environment. It points to the ways in which the operation of search engines can threaten fundamental rights. It discusses the requirements following from the right to freedom of expression, the right to private life and the protection of personal data in the context of search engines. More specifically, it provides a number of recommendations to promote diversity, impartial treatment, transparency, an search engine literacy in the context of search results as well as the fair processing of and proper access to user data. These recommendations are stipulated in more detail in the appendix.

The recommendation, a draft of which was made available in 2011 for public consultation, starts with recognition of the “pivotal role” of search engines, which “enable a worldwide public to seek, receive and impart information and ideas and [...] to acquire knowledge, engage in debate and participate in democratic processes”. On this basis, the recommendation “considers it essential that search engines be allowed to freely crawl and index the information that is openly available on the Web and intended for mass outreach.”

After considerations about the protection of search engine providers, the recommendation discusses the possible threats for the protection of human rights and fundamental rights that could follow from the operation of search engines. The recommendation notes that such threats could result from “the design of algorithms, de-indexing and/or partial treatment or biased results, market concentration and lack of transparency about both the selection process and ranking of results”. With regard to private life the recommendation addresses the impact of the processing of user data, such as search histories and user profiles, as well as the use of search engines to find personal data which have been published online.

The recommendation and the appendix indirectly touch upon a large amounts of ongoing issues in the legal and regulatory debate about the proper legal governance of search engines in Europe and in the member states. These issues

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include the application of copyright law to the crawling and indexing of content by search engines, their indirect liability for linking to illegal content, the feasibility of preventive measures such as filtering, the proper retention periods for search engine log data and their anonymisation, the fair treatment of information providers by ranking algorithms and the right to be forgotten.

Recommendation CM/Rec(2012)3 of the Committee of Ministers to member states on the protection of human rights with regard to search engines

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