[NL] Court Rules on Right to be Delisted from Search Engines

IRIS 2015-4:1/19

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On 12 February 2015, the Amsterdam Court ruled on a case where the plaintiff requested that Google modify its search results based on search queries containing certain words including, but not limited to the plaintiff's name. This is the second occasion where the Amsterdam Court has been asked to rule on this subject, popularly referred to as the "right to be forgotten" (see IRIS 2014-10/25).

The facts of the case were the following. The plaintiff, a well-known partner at the auditing company KPMG, became involved in a dispute with his contractor, who was reconstructing the plaintiff's home. The contractor was of the opinion that the plaintiff failed to fulfil his payment obligations, after which the contractor effectuated his right of retention by changing the locks of the plaintiff's home. The contractor and the plaintiff eventually managed to settle on an agreement. However, the dispute caught the attention of the media, resulting in search queries based on certain words, including the plaintiff's name, using Google search, retrieving several search results leading to news articles concerning the dispute between the contractor and the plaintiff.

The plaintiff unsuccessfully requested Google to de-index search results based on his name and other words regarding certain characteristics of the dispute. Upon denial of the plaintiff's request by Google, the plaintiff engaged summary proceedings before the Court of Amsterdam, requesting that Google de-index certain search results leading to the news articles reporting on his dispute with the contractor.

The Court stated that services like Google search have an important societal function. Therefore, the Court was of the opinion that any limitations on the functioning of search engines require strict scrutiny. Furthermore, the Court ruled that Google, in its capacity as a data-controller, can justify the processing of personal data on the legitimate interest ground, following from Article 8(f) of the Dutch Data Protection Act (DDA). Consequently, the judge stated that a data-subject has the right to request that a data-controller suspend the processing of personal data following from Articles 36 and 40 of the DDA, read in conjunction with the EU Court of Justice's (CJEU) Costeja ruling (see IRIS 2014-6/3)

The Court implemented the Costeja ruling by examining if the search results based on search queries containing the plaintiff's name could be deemed inadequate, irrelevant and/or excessive within the meaning of Article 36 of the DDA. Furthermore, the Court assessed if the plaintiff, as a data-subject, had compelling and/or legitimate reasons to object to the processing of his personal data by Google search under Article 40 of the DDA.

The Court ruled in favour of Google, explicitly stating that "the right to be delisted" merely concerns the search results shown by a search engine. A substantive review of the subject matter of the news articles requires judicial action based on defamation grounds. The Court stated that "the right to be delisted" therefore cannot be used to circumvent a defamation judicial procedure directed at the authors of the news articles. The Court went on to assess if the search results could be deemed inadequate, irrelevant and/or excessive. By taking into consideration that the search results should be read in conjunction with other media reports concerning financial affairs of KPMG, the judge was of the opinion that the search results could not be deemed excessive and/or irrelevant. The Court explicitly stated that the circumstances presented before the Court differed from those that were presented to the CJEU in the Costeja ruling, stating that search results in that case lead to an article that had been published sixteen years earlier and could thus be deemed irrelevant.

The Court went on to review if the specific circumstances of the plaintiff justified removal of the search results. The Court stated that Google's "freedom of information" should be the leading principle and that any limitation on this right, such as the right to be delisted, should be considered as an exemption from this leading principle. Due to the fact that the news reports could not be deemed defamatory, the Court again ruled in favour of Google.

Lastly, the Court made a remark regarding the plaintiff's claim, stating that an order for the delisting of search results can never be based on search queries other than the plaintiff's name. The plaintiff's claim to delist search results based on search queries other than his name should always be rejected, as information other than a person's name cannot be considered to be personal data under the DDA.

Rechtbank Amsterdam, 13 februari 2015, [eiser] tegen Google Inc., ECLI:NL:RBAMS:2015:716

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2015:716&keyword=informatievrijheid

Amsterdam Court, 13 February 2015, [plaintiff] v. Google Inc., ECLI:NL:RBAMS:2015:716