[GB] Decisions on the right to be forgotten and media reporting

IRIS 2018-3:1/16

Lorna Woods
School of Law, University of Essex

On 18 January 2018 and 22 January 2018, two decisions were delivered in cases concerning the right to be forgotten, although the matters raised in these pre-trial hearings are procedural, both flagging up the impact - in different ways - of such orders on freedom of expression. The NT1 case concerns two claims brought against Google LLC. The two claimants (NT1 and NT2) are unconnected, but the legal issues raised in the claims are the same. Both NT1 and NT2 were convicted of offences, but those convictions are now “spent” under the Rehabilitation of Offenders Act 1974. After citing paragraphs 80-81 of the Google Spain judgment (see IRIS 2014-6/3), Nicklin J equated the act as a pre-existing version of a right to be forgotten, suggesting: “[t]he underlying rationale is that, for all but the most serious offences, people should not have a lifelong "blot" on their record but should be able to live without that shadow, and the consequences it may have for their employment or other areas of their life”.

NT1 and NT2 each complained that Google, in its capacity as a search engine, continued to return links to information about their respective convictions when their names were searched, some of which were links to newspaper articles reporting the original criminal proceedings. Neither NT1 nor NT2 is a politician or celebrity; they are private individuals. NT1 and NT2 will be the first English cases to consider the specific issue of the rehabilitation of offenders.

The claimants sought reporting restrictions under section 11 of the Contempt of Court Act, on the basis that allowing the media to report their respective identities would defeat the purpose of the right to be forgotten. Although section 12(2) of the Human Rights Act, which requires the media to be notified of an application that would “affect the exercise of the Convention right to freedom of expression”, does not apply to contra mundum orders (orders applying to everyone rather than a specific party), it is still desirable that the media be notified where possible. The giving of notice is important because it gives potentially affected media organisations the opportunity, if so desired, to put forward reasoned arguments challenging the order. On this basis, the hearing for the order was postponed, although more limited reported restrictions remained in place pending that hearing. While the court accepted that in general the media is used to reporting in such a manner as not to identify individuals, reporting of the facts in this case could be sufficient to identify individuals involved, or at least some of them. This

© European Audiovisual Observatory (Council of Europe) 2026

may then affect the scope of any section 11 order.

The claims in the ABC case relate to user-generated content posted by Square Mile News, hosted by Blogger.com, a platform operated by Google. Square Mile News contains news reports of court proceedings which are posted anonymously. The case does not seem to relate to Google in its capacity as a search engine. ABC lodged an application for an interim injunction requiring the defendant, described as Google Inc, to block all access to pages on Square Mile News blog websites relating to ABC's conviction for the duration of the hearing of the applicant's claim for a permanent injunction and damages relating to claims of (a) libel; (b) misuse of private information; (c) breach of Articles 3, 6 and 8 of the European Convention on Human Rights; (d) malicious falsehood; and (e) breach of the Data Protection Act 1998. Google had refused to take any action with regard to the news reports as it merely hosts the third-party content. The application was dismissed - not on its merits, but because the applicant had served the legal documents on Google UK Limited, rather than the correct entity - Google LLC (see IRIS 2018-1/2, Tamiz v Google). The Court's permission would be required to serve the legal documents outside the jurisdiction. Furthermore, as any injunction would affect freedom of expression, it seems that notice under section 12 of the Human Rights Act would be required. The trial of the claim brought by NT1 is due to commence on 27 February 2018, and that of NT2 is due to commence on 12 March 2018.

NT1 v Google LLC [2018] EWHC 67 (QB) (Rev 3),18 January 2018

http://www.bailii.org/ew/cases/EWHC/QB/2018/67.html

ABC v Google Inc [2018] EWHC 137 (QB), 1 February 2018

http://www.bailii.org/ew/cases/EWHC/QB/2018/137.html

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026