The right to erasure/the right to be forgotten (Art. 17 of the GDPR)

Course: Internet Privacy and EU Data Protection

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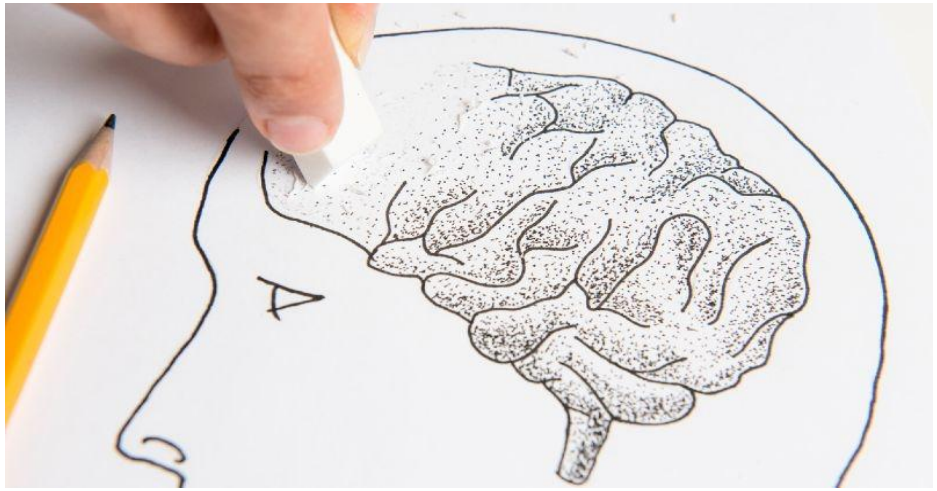
21st of November 2018
KOG, B026

So, which one is it?



Main course objectives

1) Insights into the development and implications of the right to erasure of the GDPR in general & within the Dutch context (litigation)

2) Critical thinking about the evolution of the right to privacy through the ‘the right to erasure’

3) Insights into the legal & societal consequences of executing the ‘right to erasure’

Outline

1) Historical recap
   - Pre-internet era
   - Post-internet era

2) Directive 95/46/EC
3) Google Spain vs. Costeja ECJ C-131/12 case
4) The right to erasure under GDPR
   - Conditions for application
   - Exceptions

5) RtbF in the Netherlands
6) Workshop: Dutch court cases

Historical recap (US vs. EU)

- Fundamental differences in respecting privacy
- US (Freedom of Information Act – freedom of expression, free speech, in practice a consumer right)
- EU: privacy is a fundamental right (ECHR, EU Charter)

Pre-internet era

Pre-internet era in the US

- **“Practical obscurity”**(1989)

- US Supreme Court case coined the term: **DOJ v. Reporters Comm. for Free Press, 489 U.S. 749 (1989) -** > reporters sought FBI criminal record of Ch. Medico
- SC ruled: criminal records were not subject to release under Freedom of Information Act

Pre-internet era in the EU

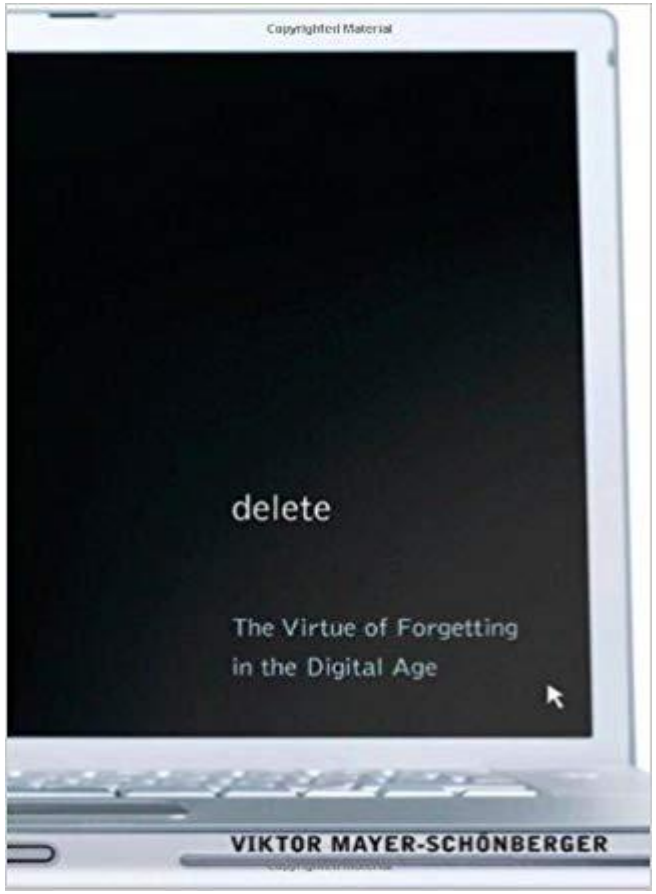
- **“Le droit l’oubli”**

- **Droit l’oubli**: - is part of one’s fundamental privacy right (Art. 7 of the EU Charter)
  - “Functions as a **shield of disproportionate intrusion by mainstream media into private life** of people entered into the public eye (the right to erasure has no such tradition)”(Graux et al., 2012)

- The right to erasure is seen as an aspect of data protection right (Art. 8 of the EU Charter)

Post-internet era

Virtual obscurity
by expiration date for data



- Mayer-Schonberger (2011) argues against capacities of ‘perfect remembering’ in our digital era.
- “Big data network capacities in recording almost every move in our lives override our physical ability to forget” (Mayer-Schonberger, 2011).
- He advocates for introducing “the concept of forgetting in the digital age through *expiration dates for information*”(ibid).
- -> a move toward translating ‘practical obscurity’ into ‘virtual obscurity’

Virtual obscurity
by a "clean slate"

1) from the perspective of society *having a clean slate* (Blanchette & Johnson, 2002)

"has long been an element of several areas of law to foster social forgetfulness, such as bankruptcy law, juvenile criminal law, and credit reporting." (Koops 2011)

Virtual obscurity
by a "clean slate"

2) from the perspective of the individual (Rouvroy, 2011) to clean slate/to have a

"right to forgetfulness is that an individual should be able to speak and write freely, without the shadow of what you express being used in the future against you." (Koops, 2011)

"without being perpetually […]stigmatized as a consequence of a specific action performed in the past" (Mantelero, 2013)

Additional reasons for the ‘right to erasure’

“Causal relation between the development of mass media and the importance of ensuring a certain degree of protection of the privacy of personal life” (Mantelero, 2013)

EU data protection predecessors of Rtbf in Directive [95/46/EC]

- MS should guarantee data subjects a right of access Art. 12(b)

"as appropriate the rectification, ***erasure or blocking of data*** **the processing** of which does not comply with the provisions of this Directive, in particular ***because of the incomplete or inaccurate*** nature of the data"

- Article 14(a) the data subject's right to object

"Where there is ***a justified objection***, the processing instigated by the controller ***may no longer involve those data***."

Google Spain v. Costeja ECJ C-131/12, May 13th, 2014

- **Facts**
  - La Vanguardia newspaper reported in 1998 on forced sale of properties arising from social security debts of Costeja
  - Request refused for deletion of newspaper report and of links to article via Google
  - Spanish DPA ordered Google to remove links and this decision was appealed

- **Questions for the Court**
  - Does the Spanish Data Protection Authority have jurisdiction?
  - Is Google a 'data controller' or a neutral intermediary?
  - Does Mr Costeja Gonzalez have the right to have these links erased?

- **Test For Jurisdiction**
  - Processing…
    - is carried out "in the context of the activities of an establishment" of the controller on the territory of the Member State
    - makes use of equipment on the territory of the Member State

Google Spain v. Costeja ECJ C-131/12, May 13th, 2014

The ruling:

- established **search engines** (Google) as ***data controller*** (defines purpose & means)
- search engines fall under EU jurisdiction (even if established beyond EU, in US)

- search engines must remove links to material about a person, if that individual asks them to do so, and if the information is **"inaccurate, inadequate, irrelevant or excessive."**

- information for removal **must not necessarily be pre-judicial** (no need to demonstrate harm if not needed for removal)

- **The ruling spurred controversies ->** freedom of expression activists, US lawyers, academics, civil society with respect to RtbF being a legal tool for censorship
- EU's Article 29 Working Party issued its guidelines on how the ruling should be implemented -> main argument they push for ***removing links only within national jurisdiction*** and not globally

<u>Food for thought:</u>

Should the balancing act under the rule of law (between fundamental rights such as freedom of expression vs. right to be forgotten) be left to stakeholders like search engines?

‘Long story short’ of ‘Google Spain’

Conditions for applying GDPR Art. 17

- "the personal data are ***no longer necessary*** in relation to the purposes for which they were collected or otherwise processed **[expiration]**;
- the data subject ***withdraws consent on which the processing is based*** according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- the data subject ***objects to the processing pursuant*** to Article 21(1) and there are ***no overriding legitimate grounds*** for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- the personal data have been ***unlawfully processed***;
- the personal data ***have to be erased for compliance*** with a legal obligation in Union or Member State law to which the controller is subject;
- the ***personal data have been collected in relation to the offer of information*** **society services** referred to in Article8(1)."

Exceptions under Art. 17

- “processing is ***necessary for exercising the right of freedom of expression and information***;
- ***for compliance with a legal obligation*** which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- ***for reasons of public interest in the area of public health*** in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- ***for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes*** in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- for the ***establishment, exercise*** or ***defence of legal claims***.”

RtbF in the Netherlands

Dutch Data Protection Authority (DPA) as a mediator

- In 2017 more than 35000 RtbF requests by Dutch residents regarding 114000 URLs
- In 46% of all cases links were removed
- When RtbF requests were denied by search engines -> Dutch DPA asked to mediate by individuals in **155** cases

- In **70** cases DPA ***rejected to mediate*** when:

(1) search engine did not clearly violate Dutch data protection law,
(2) the facts of the case were unclear
(3) there were ongoing legal proceedings.

- In **54** cases DPA ***did mediate***:

out of these in 37 cases Google actually removed the links to URLs (24% of all cases Google effectuated the RtbF)

Dutch DPA **did not** mediate

- "**Controversial statements by politicians**, including former politicians, if the information was not older than 4 years, or longer if the search results related to still relevant political history.
- **The behavior of top executives or people** with high managerial responsibilities in companies or organizations, as well as accounts of the wealth of very rich people (provided that the information was not obviously false or factually incorrect).
- **(Medical) disciplinary sanctions and convictions** for serious criminal offenses.
- **Very complex cases [**…]dealing with **allegations, convictions, and punishment of criminal conduct** or fraud by **individuals playing a role in public life**, and in which the Dutch DPA was unable to assess whether the information in question was accurate.
- **Inconvenient, but not incorrect or out-dated information** about people playing a role in public life, especially information that has been made public by these people themselves.
- **Defamatory information,** provided that the information was not obviously false or untrue.
- **Search results** that appear when someone searches for a word, **an address, or a telephone number**."

(http://blog.renforce.eu/index.php/en/2017/05/14/dutch-dpa-shares-new-data-about-the-right-to-be-forgotten-2/)

Dutch DPA treats

- RtbF requests on serious criminal data indifferently from non-sensitive data (and such data should be made available)

- RtbF requests on defamatory information should be left up to courts to decide (as long as data is correct)

Workshop on Dutch RtbF court cases (RtbF under the rule of law)

1) ECLI:NLRBAMS:2014:6118

Facts:

- On 27 May 2012, SBS 6 broadcasted an episode of the TV-show 'Misdaadverslaggever' ('Crime reporter') by Peter de Vries
- appellant discussed with A. (alleged) contract killer how to liquidate a competitor in the escort business. A. secretly filmed the conversation.
- applicant can be identified (but indicated only by his first name + first letter of his surname)
- sentenced to 6 years in prison for attempted instigation of a contract killing.
- This case became an inspiration for book 'Fraction'. There the actual murder was committed by using the full name of the applicant.
- In Google Search, various URLs appear either depicting links to the aforementioned book or to an article that mentions appellant's conviction.
- Applicant requested Google the removal of URLs

Point of law

Does Google have to remove the URLs following the introduction of applicant's name in Google Search according to article 36 of the Wbp (Wet bescherming persoonsgegevens – the Dutch Personal Data Protection Act)?

Judgment:

- **Google does not have to remove** applicant's data.
- The court rules that ***negative publicity as a*** result of a ***serious crime*** in general is, in fact, ***relevant information*** about a person.
- Applicant has insufficiently substantiated that the search results refer to information that is excessive or unnecessarily damaging.

2) ECLI:NL:GHAMS:2015:1123

Facts:

- Appeal of ECLI:NLRBAMS:2014:6118 (Amsterdam Escort Assassin).
- The court ruled that Google does not have to remove the URLs containing applicant's data. He appeals the court's decision. The Court of Appeals agrees with the lower court and states that the public has an interest in gaining access to information about serious offenses and therefore also about the prosecution and conviction of appellant. Appellant has been convicted by the court for a recently committed serious crime and he does not have the right to be protected from search results that may cause the public to link him to the offense. The appeal in his criminal case is still ongoing and the crime is very recent. This justifies publication of the information about appellant.
- Appellant wants Google to remove any link to the book that was inspired by the crime. The Court of Appeals states that the public cannot, based on the contents of the book, establish a certain connection between appellant and the offense he committed, as the facts in the book are different.
- Google also does not have to remove the autocomplete suggestion 'Peter de Vries' linked to appellant's name in Google Search.

Point of law

Does Google have to remove the information about the appellant?

Judgement

- In the court's opinion, the information in the URLs is not irrelevant. The information is up-to-date as the bankruptcies have not yet been settled and there is still a procedure before the Court of Appeals against applicant, concerning director's liability. In addition, reports of bankruptcies that may have been caused by fraud or mismanagement are subject to social debate and the public therefore has an interest in being able to find information about this.

- Applicant has not been able to demonstrate that the information in the URLs is incorrect. Applicant's claim that some parts of the text in the URLs are unnecessarily offensive or hurtful is rejected by the court. If applicant wishes a substantive review of the published information, he must address the responsible publishers or editors instead of Google.

- The weighing of interests between applicant's right to privacy and the protection of personal data, and the fundamental rights of the internet user and of the search engine operator to freedom of expression and the right to collecting relevant information, is also in favor of Google. The court rejects applicant request, Google does not have to remove or block the URLs.

3) ECLI:NL:RBAMS:2015:716

Facts:

- Applicant is partner at KPMG and had a house built in Naarden (NL).
- Until the construction was complete, he and his family lived in an adjacent house.
- In 2012, a dispute arose between applicant and the contractor. As a result, the contractor exercised his right of retention by replacing the locks of the house. In November 2012, they reached a settlement.
- On May 10, 2012, De Telegraaf (newspaper) published an article on the front page about the conflict with the contractor, including applicant's photograph. Various other media disseminated further the article.
- In 2014, applicant requested Google to remove or block the Telegraaf newspaper article when entering his name into Google Search. Google Inc. declined the request. Applicant then demanded that Google Inc. or removed or no longer processed all URLs referring to the conflict. Again, Google Inc refused, as it deemed the information relevant for public interest.

Point of law

Does Google have to remove the URLs following the introduction of applicant's name in Google Search according to Article 36 of the Wbp (Wet bescherming persoonsgegevens)?

Judgment

- Applicant does not have the right to be forgotten regarding the URLs.

- The right to be forgotten is an exception to Google's right to freedom of information. In this case, the right to freedom of information is leading. The articles that applicant wants to be removed, do not contain information that unnecessarily causes damage.

4) **ECLI:NL:RBAMS:2015:9515**

Facts

- Applicant is a journalist. In NRC-Handelsblad, a Dutch newspaper, an article discusses a weekly paper. The NRC article states that the weekly paper has terminated the collaboration with a freelance employee (applicant) with immediate effect, because of plagiarism.

- When entering applicant's name into Google Search, the 5th result is an URL link to the NRC article, including a snippet (a short summary of the page underneath the title).

- Applicant requested Google to remove the URL. **Google declined the request**. On applicant's request, the Dutch Data Protection Authority then requested Google to review the decision. Google granted the request, but did not change its decision. Applicant now requests the court to order Google to remove the URLs. The request is based on articles 36 and 46 Wbp and the Google Spain judgment. The request only regards the link, not the complete search result itself.

Point of law

Is the information shown by the search result excessive and irrelevant given the circumstances of this case, and should Google remove the link?

Judgement

- **When imposing restrictions on the operation of a search engine, such as Google Search restraints should be upheld** (ECLI:NL:RBAMS:2014:6118), because such search engines fulfill an important social role in society.

- The result of the weighing of interests is, in this case, **not in applicant's advantage**. The fact that the article was written years ago, does not mean it is no longer relevant. With regard to this, the following is important:

- There's **no dispute about the fact that the NRC article provides correct information**;
- The NRC article refers to applicant's actions. In a way, he has brought the publications and the public interest that resulted from his actions upon himself;

- The **NRC article refers to applicant's actions as a journalist** – **not as a private person** – and applicant still works in the journalistic sector;

- In the NRC article, applicant's conduct is regarded as **plagiarism.** It is undisputed that plagiarism, also in lighter forms, is regarded a **serious offence in journalistic circles.**

- In light of these circumstances (also based on privacy-based guidelines in relation to the *Google Spain* judgment)**, the court considers it important that the information is available and will remain so in the future.** especially regarding the journalistic profession and applicant's potential future employers. They must be able to assess the extent of the seriousness of applicant's "wrongdoing" and the fact that it took place quite a while ago. It is therefore important for Google to be able to offer the information. The search result regarding the NRC article is found not to be excessive or irrelevant.

- It is **reasonable that Google declined applicant's request** to remove the link. The court therefore declines applicants request.

5) **ECLI:NL:RBROT:2016:2395**

Facts

- **Applicant worked as an attorney** in 2012 and 2013. In 2012, he was **convicted for possession of prohibited weapons and sentenced to a suspended prison sentence** and community service. A local blogger published an editorial article about this on his website, including applicant's name and photo, quotations from the hearing and the sentences imposed.

- When typing applicant's full name into Google Search, different URLs show up in the search results. Applicant requested Google to remove or not show the URLs as a search result linked to his name. Google rejected the request. Applicant then asked CBP to mediate. CBP rejected because the criminal conviction is recent and the news about it serves a public interest.

- Applicant requests the court to order Google to remove or block the URLs resulting from searches for his name. According to applicant, the processing of data is unlawful according to article 8 paragraph 5 of the European Privacy Directive jo. article 16 Wbp. He also invokes the fundamental right to the protection of privacy and personal data, based on articles 7 and 8 of the EU Charter, article 8 ECHR and the Google Spain judgment.

- The request does not refer to the complete search result, but to URLs linked to one source page.

Point of law

Is this data relating to offenses, criminal convictions or security measures, as stated in article 8 par. 5 of the European Privacy Directive?

Does Google have to remove or block the URLs from the search results?

Judgement

The court rules the data concerned indeed relates to offenses or criminal convictions. As no exceptions apply in this case, processing of the data is prohibited according to article 16 Wbp.

Insofar this should be judged differently, the court considers that a weighing of interests – the applicant's right to privacy and Google's right to maintain search results – is also in favor of applicant, based on article 36 jo. 40 Wbp. **The court rules that Google must remove the URLS from its search results**.

6) ECLI:NL:GHDHA:2017:1360

Facts:

- Appeal of ECLI:NL:RBROT:2016:2395. For the facts, see page 7.
- The court ruled that Google has to remove the URLs from its search results. Google appeals the decision.

- Google argues that it does not intend to process personal data relating to offenses or criminal convictions and therefore violate the prohibition of article 16 Wbp. Google also argues that in this case an exception to the prohibition is applicable according to article 23 Wbp. Google states that the data were made public by defendant as the processing is a direct and foreseeable result of his actions. Google also tries to invoke the journalist exception for processing data.

Point of law

- Does Google have to remove the URLs from its search results?

Judgement

- Google argues that it did not intend to violate article 16 Wbp. The fact that Google knew it was possibly violating article 16 Wbp, and still continued to do so, suggest otherwise.

- The Court of Appeals rules that no exception to article 16 Wbp is applicable. Google cannot rely on the journalist exception, as Google is an operator of a search engine, not a journalist.

- The Court of Appeals upholds the court's judgment, so Google must remove the URLs.

  http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2017:1360

7) **ECLI:NL:RBAMS:2017:2896**

Facts:

- Applicant owns a gym, a sportswear store and organizes poker tournaments. At a certain point in time, he was associated with money laundering through a company and drug-related offenses. Newspaper MaltaToday has published an article on the issue. The article states that applicant was a suspect in a drug investigation, that he was a beneficiary of a company and that he was involved in questionable financial transactions. The article also states that a Maltese politician who was involved in the case, possibly covered for applicant.

- The revelations in MaltaToday led to further publicity. A Maltese journalist (a former MEP) posted an article on his blog in which a photo of applicant is shown and applicant is mentioned in connection with money laundering. The article was copied by various other media. Subsequently, a committee was set up in Malta to investigate why the police investigation in Malta had been discontinued at the time. This again led to publicity.

- Applicant requested Google to remove the link to MaltaToday's article when searching for his full name in Google Search. Google declined the request. According to Google, the information about applicant is relevant, in the public interest, not outdated and not excessive.

- Applicant requests the court to order Google to remove the link between applicant's full name and the URL from www.google.nl and www.google.eu. The request is based on the Wbp, the EU Charter and the Google Spain judgment, as well as unlawful acts by Google.

- Google argues that applicant has become a public figure because of his actions, that the reporting is limited to business/financial activities that have become public domain. The article does not contain any details about claimant's private life. Google therefore argues it is not bound to remove the URL..

Point of law

- Does Google have to remove the URL?

Judgment

- Applicant has no public function and **cannot be regarded as a ‘public figure’**. Google has not made sufficiently clear why the public has an interest in obtaining information from the article when typing applicant’s full name into Google Search. It is also important that it’s about sensitive information about applicant’s private life, while criminal charges against him were dropped by the public prosecution due to lack of evidence. Google can still make the information available to the public, but not as a search result connected to applicant’s name. The court rules that Google must remove the URL from the search results.
- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2017:2896

8) **ECLI:NL:RBDHA:2017:264**

Facts:

- Applicant is a former real estate entrepreneur. In 2005, he was suspected of organized mortgage fraud and a criminal investigation was initiated. When entering applicant's name in Google Search, various URLs appear in the search results. In 2015, applicant requested Google to remove some URLs from the list of search results. Google declined the request. In 2016, the court closed the criminal case against applicant and applicant was not convicted. Applicant then requested Google to review the earlier request, referencing to the court order. Google declined the request again.

- Applicant requests the court to order Google to remove 10 URLs from the search results that appear when searching for applicant's name. He bases the request on article 8 paragraph 5 of the Privacy Directive jo. article 16 Wbp, which prohibits processing of criminal data. According to applicant, no exceptions to this prohibition under article 22 Wbp apply.
- Subsidiary, applicant invokes articles 7 and 8 EU Charter and the Google Spain judgment.

Point of law:

- Can the processing of data in this case be regarded as the processing of criminal data as referred to in article 16 Wbp and must Google therefore remove the relevant URLs from the search results?

Judgement

- There is no processing of criminal data as referred to in article 16 Wbp. The search results do not include the recording of such concrete facts and circumstances that they constitute a judicial finding of fact within the meaning of article 350 of the Code of Criminal Procedure). Nor can be said that the processing in the search results constitutes a more serious suspicion for applicant than a reasonable suspicion of guilt to a criminal offense.
- When weighing up the interests, the outcome benefits Google. Interference with the fundamental rights of applicant by Google is justified. Applicant has not or not sufficiently proven that the display of the URLs in the search results is incorrect, irrelevant or excessive and that his interests regarding privacy outweighs the public interest of being able to find the web pages and the importance of Google being able to keep the web pages available to the public.

- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2017:264

9) **ECLI:NL:RBOVE:2017:278**

Facts:

- In 2012, applicant was sentenced to 30 months in prison, 10 of which conditional, because of committing lewd acts with a minor. The court of appeal annulled the court's judgment and sentenced applicant to 12 months in prison for committing lewd acts, 6 of which conditional.
- When entering applicant's name in Google Search, the search results contain various URLs that refer to web pages, images and a video. Applicant requested Google to remove a number of URLs (URL 1, URL 2, URL 3, URL 4) from the search results. Google declined the request.

- Applicant therefore requests the court to order Google to remove or block a number of URLs from the search results. He bases his request primarily on the unlawfulness of the processing of criminal data according to article 8 paragraph 5 of the Privacy Directive and article 16 Wbp. Subsidiary, applicant claims that Google infringes the fundamental right to the protection of privacy and personal data, articles 7 and 8 EU Charter and article 8 ECHR. He also refers to the Google Spain judgment.

- Applicant argues that the combination of data processing constitutes a total exposure of his personal data – his name, photos and camera images, reference to his former company, in combination with a colored representation of the handling of the criminal case at the court. This representation is in conflict with the conviction on appeal.

Point of law

- Is there any processing of data relating to offenses or criminal convictions by Google and must Google therefore remove or block the relevant URLs?

Judgment

- The court rules that URL 1 (a link to a Facebook post) contains special personal data and that applicant did not intend for this information to become public. The court rules that this is different with respect to URLs 2, 3 and 4. The intention to make that data public is apparent from applicant's conduct. The information discloses activities relating to business and promotion regarding applicant's former company, in which applicant explicitly profiles himself. According to the court, this justifies Google's processing of the (special) personal data in URLs 2, 3 and 4. A weighing of interests of the applicant and Google does not lead to a different decision. The court states that the information is not inadequate, irrelevant or excessive.
- The court grants applicant's claim regarding URL 1 and declines applicant's claim regarding URL 2, URL 3 and URL 4. Google is ordered to remove or block URL 1.

- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOVE:2017:278
- Gekleurde weergave? Weet niet zeker hoe je dit in het Engels zegt.

10) **ECLI:NL:RBMNE:2017:805**

Facts:

- Applicant claims he suffers from negative publications on the internet, in which he is wrongly labeled as (ex) criminal and someone who falsifies diplomas and titles. He would therefore not be able to become socially active again to make a living. He filed a lawsuit because in his opinion, Google should remove the search results that link to publications about him.

Point of law

Are the search results inadequate, irrelevant or excessive, or is the published information incorrect and does applicant therefore have a right to removal of the search results by Google?

Judgment

- The court rules that applicant has a right to removal of the search results if there is incompatibility with the Wbp. There is incompatibility if the search results are inadequate, irrelevant or excessive (as ruled in the Google Spain judgment). That is not the case here. The court rules that it's not certain the published information is incorrect. The question of whether applicant graduated from a university and therefore possibly wrongly claims to be a graduated lawyer, is still relevant. The court rules there is no sufficient reason to remove the search results and therefore decides Google does not have to remove them.

11) **ECLI:NL:RBLIM:2018:2751**

Facts:

- Applicant was director of a private limited liability company, which in turn was director of four other private limited liability companies, all located in the same city. In 2005, the companies were declared bankrupt. In addition to publications in national media, regional newspaper Dagblad De Limburger published about the bankruptcies. In 2006, applicant and his brother filed a lawsuit against publisher De Limburger, to prevent publication of certain articles. On appeal, these claims were rejected. From 2010 to 2012, Dagblad De Limburger continued to negatively report about procedures against applicant and his brother.

- When entering applicant's name into Google Search, different URLs come up in the search results. This procedure is about five of those URLs. Applicant requested Google to no longer show the URLs as a result of entering his name into the search engine. Google declined the request.

- Applicant requests the court to order Google to remove or block the URLs. He argues that the information in the URLs is irrelevant and incorrect. He also states that some parts of the text in the URLs are unnecessarily offensive or hurtful.

Point of law

- Is the information irrelevant, incorrect or unnecessarily offensive or hurtful, and does Google therefore have to remove or block the URLs?

Judgement

- The Court of Appeals agrees with the lower court and states that the public has an interest in gaining access to information about serious offenses and therefore also about the prosecution and conviction of appellant. Appellant has been convicted by the court for a recently committed serious crime and he does not have the right to be protected from search results that may cause the public to link him to the offense. The appeal in his criminal case is still ongoing and the crime is very recent. This justifies publication of the information about appellant.
- Appellant wants Google to remove any link to the book that was inspired by the crime. The Court of Appeals states that the public cannot, based on the contents of the book, establish a certain connection between appellant and the offense he committed, as the facts in the book are different.
- Google also does not have to remove the autocomplete suggestion ‘peter r de vries’ linked to appellant’s name in Google Search.
- The Court of Appeals upholds the judgment being appealed.

12) ECLI:NL:HR:2017:316

Facts:

- Appeal in cassation of ECLI:NL:GHAMS:2015:1123 (first instance: ECLI:NLRBAMS:2014:6118).

- The court ruled that Google does not have to remove the URLs containing applicant's data. The Court of Appeals (Amsterdam) upholds this judgment. Appellant now appeals the decision in cassation at the Supreme Court.

Point of law

Did the Court of Appeals apply the law correctly?

Judgement

- The Supreme Court states that the Court of Appeals did not state anything concerning the interest of the public with regard to being able to find information about the conviction when entering appellant's full name into Google Search. Neither did the Court state what might be relevant in connection to this, such as whether appellant plays an active role in public life. The mere fact that appellant was convicted by the court in first instance and that there has been publicity following the conviction, is not sufficient to justify the infringement of appellant's rights to privacy and the protection of personal data. The Court of Appeals did not determine appellant's interest, including the fact that his conviction is not yet irrevocable. The Court of Appeals did not properly weigh the interests of the applicant and the public.

- The Supreme Court overturns the Court of Appeals' judgment and refers the case to the Court of Appeals of The Hague for a new decision.
- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2017:805
- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBLIM:2018:2751
- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2015:1123
- http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2017:316
- Ik weet niet zeker hoe je dit zegt in het Engels.

Conclusions & recap