

**Summary of substantive policy discussions**  
**at Liberty Council meeting**  
**June 2014**

**The decision of the Court of Justice of the European Union in Google Spain**

The meeting discussed the recent judgment of the CJEU in Google Spain. The Court held that internet search engine operators such as Google are to be considered processors of an individual's personal information under EU Directive 95/46/EC if such material appears in their search results. Search engine operators can therefore be obliged to remove links to webpages published by third parties from a list of results displayed following a 'name search'. This does not mean that the link will no longer exist or the content taken down, just that it will not be displayed in the list of results produced following a search for a particular name. The court held that the interests of search engine users to access information should be balanced against an individual's privacy interests in each case and the test to be applied is whether the data displayed is "*inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in light of the time that has elapsed*". Factors that will be relevant include – the nature of the information in question; its sensitivity to an individual's private life; and the interest of the public in having the information. In terms of enforcement, individuals may bring a request directly to the operator of a search engine and where an operator does not grant a request an individual may bring the matter before the ICO (in the UK).

The meeting discussed the role of the web and search engines in modern society; whether or not the Court has struck the right balance in principle; and if so, whether the test laid out in the judgment is appropriate in human rights terms. It was noted that the Web and search engines play a huge role in modern life in facilitating free speech and the exchange of ideas. However commercial search engines shouldn't be regarded as a comprehensive or objective indexes free from bias and control. Search engines use algorithms to create 'meaningful' results and given that they are services provided by private companies these can be influenced by commercial interests and data profiling carried out on the search engine users. It was noted that as the judgment does not affect content, but rather index linking, so the impact on freedom of expression shouldn't be exaggerated. Rules affecting the publication of original content should rightly invoke much greater protection of freedom of expression. Council agreed that the information that appears in a

keyword search can have huge human rights implications for an individual. A search engine results page can produce a structured overview of information that may otherwise have only been accessible or connected with a lot more research. This has very real and practical implications for people, for example those with convictions or acquittals seeking employment. The impact on privacy is also somewhat arbitrary eg. if someone has an unusual name and lives in a small town and so could be discriminatory in practice.

Council concluded by agreeing that it supported the principle laid out in the judgment on the basis of the significant interference with privacy and other rights that can be caused by indefinite index-linking and the fact that it was links and not content that would be taken down. With regard to the specific test for removal, Council was of the view that it was too vague and uncertain. Given the tension with free expression, the test should be more closely circumscribed. It was generally agreed that the test should more closely mirror pre-existing ECHR standards.