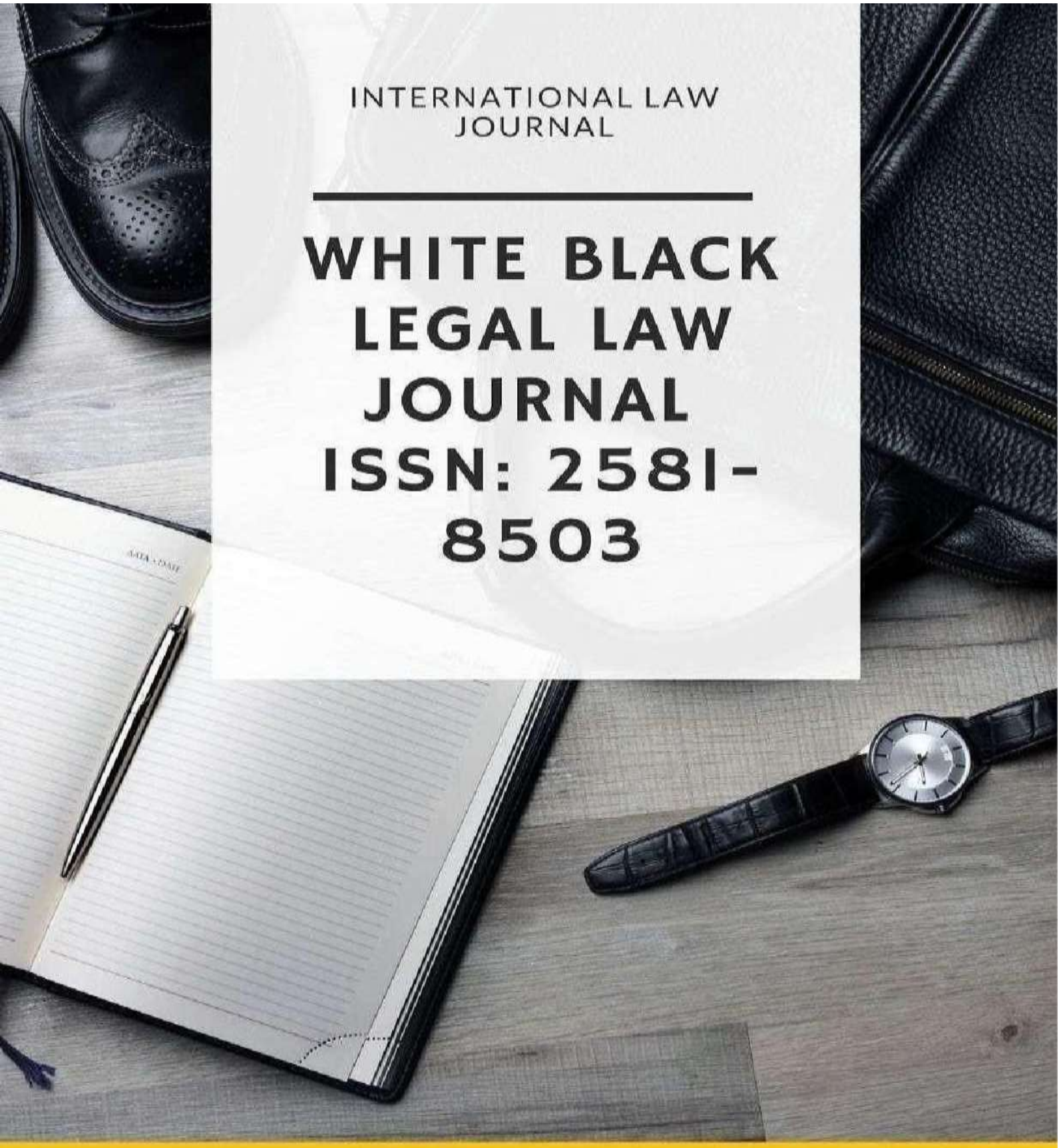

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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GOOGLE SPAIN SL v. AGENCIA ESPANOLA DE PROTECCIÓN DE DATOS (2014)

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INTRODUCTION

[1]Google Spain SL v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, often known as the "Right to be Forgotten" case, was a significant case in the digital age that dealt with the interplay of freedom of expression, data protection, and privacy rights. The issue started when Mario Costeja González's name was linked to irrelevant and out-of-date personal information in search results, and Google Spain, a division of Google Inc., allowed the links to be shown on its search engine. Even though a Spanish newspaper had legally published the information years earlier, Costeja said that the links' continued existence negatively affected both his personal and professional lives. Important legal questions pertaining to the applicability of EU data protection regulations, including the EU Data Protection Directive 95/46/EC, and whether Google, as a search engine provider, could be regarded as a "data controller" in charge of processing personal data were at the heart of the case.

The case raised important questions about online platforms' responsibilities in handling personal data, balancing privacy with freedom of information, and recognizing individuals' rights to control their data. The European Court of Justice ruled in favor of Mario Costeja, establishing the "Right to be Forgotten" in EU law. This legal precedent allows individuals to request the removal of certain personal information from search engine results, even if it was lawfully published originally. The case has had a lasting impact on data protection laws and privacy rights globally.

[1] Harvard Law Review (2023) *Google Spain SL V. agencia española de protección de datos*, *Harvard Law Review*. Available at: https://harvardlawreview.org/print/vol-128/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos/ (Accessed: 14 March 2025).

BACKGROUND AND FACTS

- [2]The Spanish newspaper La Vanguardia's print edition reported on two instances of forced property sales in 1998 that resulted from social security deficits. The Spanish Ministry of Labor and Social Affairs issued the directive for this action. Later, an online version of the edition was released. Among the property owners mentioned in the announcements was Mario Costeja González.
- In November 2009, Costeja protested to the newspaper's officials about the extraneous announcements that appeared when he typed his name into the Google search engine. However, the newspaper responded that it was improper to remove his data because the publication had been made in accordance with the Spanish Ministry of Labor and Social Affairs' directive.
- The Spanish newspaper La Vanguardia's print edition reported on two instances of forced property sales in 1998 that resulted from social security deficits. The Spanish Ministry of Labor and Social Affairs issued the directive for this action. Later, an online version of the edition was released. Among the property owners mentioned in the announcements was Mario Costeja González.
- In February 2010, Costeja reached out to Google Spain, requesting that the announcement links be taken down. However, Google Spain forwarded the request in accordance with its perception that Google Inc. (Reg. office: California, United States) was the accountable entity. The irate Costeja then complained to the Agencia Española de Protección de Datos, AEPD (Spanish Agency of Data Protection), asking that the newspaper and Google Spain/Google Inc. remove the data and links to the date.
- That the APED dismissed the newspaper's lawsuit on July 30, 2010, but sustained the subsequent one and ordered Google Inc. and Google Spain to take down the alleged links, rendering the material inaccessible.
- Before the Audiencia Nacional (Spanish National High Court), Google Spain and Google Inc. filed an appeal against the ruling. Audiencia Nacional (Spain) obtained a preliminary determination under Article 267 TFEU from the CJEU on February 27, 2012, and the proceedings were halted that the CJEU requested the Advocate General's

[2] Eleni Frantziou, Further Developments in the Right to be Forgotten: The European Court of Justice's Judgment in Case C-131/12, *Google Spain, SL, Google Inc v Agencia Espanola de Proteccion de Datos*, *Human Rights Law Review*, Volume 14, Issue 4, December 2014, Pages 761–777, https://doi.org/10.1093/hrlr/ngu033

opinion since the questions presented were novel legal ones. The judgment was passed when Advocate General Niilo Jääskinengave submitted his opinion on June 25, 2013

ISSUES AND ANALYSIS

[3]The issues raised in the following case were:-

1) Whether or not Google Spain SL, a subsidiary of Google Inc. was responsible for the search engine?
2) Were Google Inc. and Google Spain SL within the purview of the European Union Directive 95/46/EC and other obligations?
3) Could Google Inc. and Google Spain SL be regarded as "data controllers?"
4) Whether or not Mr. Costeja has the right to request for the deletion of lawfully published content?

Arguments on Behalf of Google

- Google Spain held that since it was a subsidiary of Google Inc, Mr. Costeja's complaint was transferred to Google Inc.
- They contented that since Google Inc.'s registered office was in California, United States, it did not fall within the ambit of the EU Directive 95/46/EC.
- Google denied being considered as a 'data controller' since they did not process any personal data in Spain.
- They stated that under any circumstance, Mr. Costeja should not be allowed to remove a lawfully published material as instructed and approved by the Spanish Ministry of Labour and Social Affairs.

Arguments on Behalf of AEPD (Spanish Agency of Data Protection) and Mario Costeja

- AEPD claimed that Google Inc. and Google Spain SL be considered as a single economic unit as Google Spain SL, the subsidiary of Google Inc., promoted and sold advertising spaces authorized by Google Inc., which is equal to data processing.
- They observed that the EU Directive precedes the Google Era (1995). Although, the new replacement in late 2014 by the General Data Protection Regulation sets the

[3] Mukerjee, S. (2016) *Right to Be Forgotten: Google Spain SI Vs. Mario Costeja Gonzalez*, *Iblog Pleaders*. Available at: https://blog.ipleaders.in/right-forgotten-google-spain-sl-vs-mario-costeja-gonzalez/ (Accessed: 12 March 2025).

guideline clearly. Therefore, Google's business model falls within the ambit of the EU Directive 95/46/EC.

- As per Article 2(b) of the EU Directive which defines processing of personal data as- *('processing') shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction,* Google must be regarded as a 'data controller' as per its literal interpretation.
- Mr. Costeja argued that the forced sale which was published in La Vanguardia had concluded years ago. Hence, the links on Google's search engines provided irrelevant data which lowered his economic status as the debt was subsequently paid by him. This action restricted his development in his professional life. Therefore, he prayed for the Right to be Forgotten.

What is the EU Directive 95/46/EC?

[4]The Data Protection Directive, officially known as Directive 95/46/EC on the protection of persons with regard to the processing of personal data and on the free movement of such data, was adopted by the European Union in 1995. The Data Protection Directive governs the collection and processing of personal data inside the European Union and is legally binding among its member states.

The seven guiding principles of the Organization for Economic Cooperation and Development's Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data serve as the foundation for the Data Protection Directive.

These seven principles, which were established in 1980, consist of:

a) Notice: People must to be informed when their personal information is collected.
b) Purpose: Personal information should only be used for the specific purpose for which it was gathered.

[4] Lord, N. (2017) 'What is the Data Protection Directive? The Predecessor to the GDPR', *Digital Guardian*, 24 April. Available at: https://www.digitalguardian.com/blog/what-data-protection-directive-predecessor-gdpr (Accessed: 12 March 2025).

c) Consent: Before sharing personal information with third parties, a person's consent should be sought.
d) Security: Information should be protected against illegal use or compromise.
e) Disclosure: People should be alerted when their personal information is being collected.
f) Access- People should be able to see their personal information and update or alter any inaccurate information.
g) Accountability: People ought to be able to hold data collectors responsible for adhering to the above six standards.

However, these recommendations were not legally binding and the laws governing data privacy varied depending on where in Europe you were. The European Commission incorporated the OECD principles into the Data Protection Directive, a legally binding set of data protection rules for EU member states, after realizing that inconsistent data privacy regulations across EU states were impeding data transfers.

Right To Be Forgotten

Article 17 and Recitals 65 and 66 of the GDPR both define the right to be forgotten. In Article 17, the GDPR highlights the specific circumstances under which the right to be forgotten can be exercised. A person has the right to have their personal data erased if:

- The personal data is no useful to the organization that originally collected or processed it.
- An organization has obtained an individual's consent lawfully for processing the data and that individual voluntarily withdraws their consent.
- An organization is justifying the processing of an individual's data by relying on legitimate interests and the individual objects to this processing, and there is no overruling legitimate interest for the organization to continue with the processing.
- An association is reusing particular data for direct marketing purposes and the individual objects to this processing.
- An organization processed an individual's personal data illegally.
- An organization must erase personal data to comply with a legal ruling or obligation.
- An organization has processed a child's personal data to offer to information society services.

[5]An association's right to reuse someone's data might misuse their right to be forgotten. Then

[5] Wolford, B. (2025) *Everything you need to know about the "Right to be forgotten"*, *GDPR.EU*. Available at:

are the reasons cited in the GDPR that trump the right to erasure:

- The data is used to exercise the right of freedom of expression and the right to information.
- The data is being used owing to a legal obligation.
- The data is being used when exercising an organization's official power or performing a duty in the public interest.
- The data being processed is necessary for public health purposes and serves for public welfare.
- The information being processed is required for occupational or preventative medical procedures. This is only applicable when a health professional processing the data is bound by a legal duty of professional secrecy.
- The data contains significant information that is useful for statistical, scientific, historical, or public interest reasons, and its deletion would probably hinder or stop the processing's progress toward its intended outcome.
- The information is being used to support a defence or to support other legal claims.

Additionally, if an entity can demonstrate that a request to delete personal data was unreasonable or baseless, it may refuse the request or ask for a "reasonable fee."

The Court's Decision

Directive 95/46 requires EU states to maintain free data flow within the EU while safeguarding individuals' right to privacy in the processing of personal data. Any information that can be used to identify a person is considered personal data, and any action taken on that data is considered processing. A "controller" is any entity that decides how and why to process data.

The European Court of Justice (ECJ) investigated whether search engines engage in data processing and qualify as controllers. It ruled that Google's collection, indexing, and display of personal data constitutes processing, and that Google is a controller because search engines play an important role in disseminating personal information.

[6]The Court also determined that Google Spain, as a subsidiary of Google Inc., is subject to the Directive's jurisdiction because it promotes and sells advertisements that generate revenue for

https://gdpr.eu/right-to-be-forgotten / (Accessed: 12 March 2025).

[6] *Google Spain SL v. Agencia Española de Protección de Datos* (no date) *Columbia Global Freedom of Expression*.
Available at: https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos-aepd/ (Accessed: 12 March 2025).

Google's search engine.

According to Articles 12(b) and 14(a), people have the right to ask for the deletion of data that is erroneous or unnecessary. Google maintained that the original publishers should be the ones to receive such requests. However, the European Court of Justice (ECJ) highlighted people's fundamental right to privacy and decided that search engines must take down links to personal information upon request, even if the original content is still available online. Balancing privacy with the public's right to information, the Court stated that the right to removal depends on the information's sensitivity and the public's interest, particularly concerning public figures. While individuals can request data removal, this right may be overridden if public interest justifies continued accessibility.

CONCLUSION

The ongoing conflict in the digital age between information access and privacy rights is exemplified in this case. While Google Inc maintained that it was not subject to EU law because its headquarters were in California and since it did not produce or oversee the original content, it should not be regarded as a "data controller". It further argued that deleting content from search engines which had been legally published would create a risky precedent.

However, Costeja and the Spanish Data Protection Agency (AEPD) maintained that Google Inc. and Google Spain functioned as a single organization, with Google Spain's ad sales function being a crucial component. They contented that Google was a "data controller" under the EU Directive since it actively organized and disseminated personal data through its search engine. Costeja specifically emphasized that, even though the information about his financial history was legally published, it was damaging his career and reputation, which is why he had the right to be forgotten.

Ultimately, the European Court of Justice (ECJ) decided in Costeja's favour, acknowledging Google's obligation as a data controller and upholding people's right to ask for the deletion of personal information that is no longer needed or relevant. The Court did concede, though, that this right must be weighed against the public's right to information, especially when it comes to public figures.

This case set a landmark precedent, shaping the debate on digital privacy and corporate accountability. It reinforced the idea that tech giants cannot evade responsibility for the data they process and display, marking a significant shift in how personal data is handled in the internet era.

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