

DATA PROTECTION ON THE INTERNET

“Search engines and rights of erasure and objection”

I. Introduction

Good morning ladies and gentlemen,

In the first place, I would like to thank the organizers the invitation to this interesting and opportune seminar about "data protection on the Internet".

It is doubtless that the main present challenges are focused on the technological development that makes extraordinarily available to any person tools to find information about third parties.

Nowadays, search engines are a fundamental tool of social development, but the constitutional rights and, in particular, the rights of data subjects must be respected.

Nevertheless, all we are aware that the amazing technological advance has raised new challenges that force to reconsider their repercussions on the individual rights.

Last year, the Spanish Data Protection Authority took the initiative to analyze the privacy policies of the greater world-wide companies of Internet services due the high number of claims received from citizens and the press media. For that, the Agency required information to Google, Microsoft and Yahoo!, here presents.

Consequence of these meetings, we adopted a Statement on search engines, in which we stated clearly, among other aspects, the mechanisms for the protection of the rights of the data subjects in the Internet.

In addition, these concerns became patent in the Annual Address of the Spanish DPA before the Spanish Congress on the 28th of November 2007. As we stated then, the development of search engines, and other technologies, **“threaten the traditional criteria regarding the guarantee of privacy and requires an urgent update and adaptation.”**

This way, it is important to emphasize the requirement, every time with greater intensity, of the necessary balance of the guarantees before the new risks that offer new services of Internet like search engines.

For this reason, there is a conviction, more and more generalized on the convenience of establishing a international standards that define agreed rules to guarantee privacy in the Internet.

These policies are necessary for the whole set of users in the Network, not to trivialize the use of the Internet and its risks.

In the Internet, not all is permissible. We must contribute to avoid that contents that infringe the data protection laws continue to be uploaded on the Internet.

Therefore, we can determine that the Internet search engines process two kinds of personal data:

- data that are furnished by users themselves and derived from the use of the service and,
- data obtained from the processing and publication of personal information drawn from other websites.

My intervention will take into account this premise.

II. Regarding the Importance of the right of Information on the Internet.

The legitimate processing of personal data by search engines **is subject to a pre-condition:** the individuals whose data are being processed must be informed of what data are going to be used, by whom, and to what purpose and to whom their data may be given.

This information requirement is of essential importance in the use of search engine services on the Internet, because of the following reasons:

- Firstly, because the efficiency of search engine is so high that users, largely unaware of the processing of personal data that is involved, tend to trivialize its importance;

- Secondly, because although search engines have detailed privacy policies in relation to the use of the personal data of users, **they could very well be considered virtual or fictional.**

This inefficiency is caused because search engines **do not sufficiently emphasize their own privacy policies on their homepages, nor are accessible via links.**

Furthermore, as the information on privacy policies is **so complex and unintelligible to users**, even though they may suspect the possible risks involved in the use of their data, are unlikely to obtain conclusions regarding those risks when accessing that information.

The described circumstances allow to be concluded that the users of search engines do not have, **in a clear and accessible manner**, information on the consequences that using those services may have regarding their personal data.

The consequences of this lack of information is that the legitimacy for the processing of personal data conducted by search engines may be questionable due to the information deficits.

Because of this, **it is necessary to urgently consider new information mechanisms allowing users to effectively know about the use of their personal data**; and there is the need to bring into line the various search engine privacy policies so that, while allowing the search engines to be rendered, they minimise consequences for user privacy.

III. About the importance of the right of data subjects.

Search engines must guarantee, at the data subject's request, the exercise of the rights of access, rectification, erasure and objection.

However, in the field of search engines it is particularly relevant to protect the **rights of the people whose data may be accessed as a result of the searches that are conducted.**

These people may not be users of the search engines but, their data may be known by anyone as a result of the capturing of the information available on the

Internet by the search engines and the listings that they offer users to facilitate a selective access to information.

As I have already stated before the Spanish Congress, **“Although the initial incorporation of personal information on the web may be legitimate at its source, its universal and everlasting retention on the Internet may be disproportionate.”**

People must have at their disposal reaction instruments in order to avoid, on their own initiative, being subject to an universal display.

The Data Protection Law provides citizens with those reaction instruments, mainly by means of the rights of erasing data and objecting the processing.

IV. About the importance of the right of erasure

Search engines are a fundamental tool of social development, but the constitutional rights and the rights of the data subjects must be balanced and respected.

The exercise of the right **of erasure should be associated to with a corresponding exercise of those rights against website controllers.** Otherwise, if the search engine cancels the data or prevents access, a subsequent check within the search engine would again allow access to the information.

In this sense, sometimes, the information uploaded on the Internet constitutes a manifestation of constitutional liberties that protect the communication and free reception of information. But the prevalence of liberties of expression and information as opposed to the data protection fundamental right has to be limited when the personal data do not enjoy general interest nor affect a public person.

Therefore, people who are not public figures or are not in the news should not resign themselves that their personal data will circulate in the Internet. They should be able to react against their inclusion in a system of universal communication as is the Internet.

There will be other occasions in which, because of a prevalence of the freedom of information, this right of erasure will not be possible before the responsible of

the information (for instance, a newspaper that is publishing information with the aforementioned criteria).

V. Finally, about the importance of the right to object.

The exercise of this right has some peculiarities. As a first step, the activity of search engines is focused mainly on the association of the terms of the search to the websites on which said personal data appears.

Nevertheless, there are occasions when those website controllers may be under the obligation to keep the information (for instance, because it is required by national law). But this obligation does not apply to search engines.

The website controller may be prevented, owing to a legal requirement, from processing the data. But this obligation is not imposed to the search engine, which must take measures not only to stop processing the information but also to prevent future access to the information.

The AEPD has been defining, via a number of decisions, criteria for protecting the right of erasure of the information available on the Internet and, specifically, the appropriateness of the right to object in respect of search engines, when compelling legitimate grounds relating to the particular situation to the processing of data relating to a person.

Several Spanish laws impose the obligation to publish personal data. The Spanish DPA has had relevant cases regarding the right of objection, taking into account the legal obligation to publish all provisions, resolutions, edicts, announcements, Acts or agreements by the different Public Authorities and Judicial Authorities.

The obligation to publish information, regarding, for example, disabilities, economic aids to citizens or pardons, does not mean that this personal information should be widespread on the internet.

For example, in Spain the law requires to publish pardons in the Official Journal.

This Official Journal is also a means to notice to citizens decisions regarding personal data when they are not found in their address.

A third possibility is that the Official Journal is used to inform about economic aids because of disabilities.

And finally, imagine, for example, that a law would compel to publish in the Official Journal personal data about offenders committing battery or tax fraud.

For the aforesaid reasons, it is necessary to insist on the multiple **disclosure effects** of search engines, and their disproportionate repercussion on personal data protection.

V. Concluding Remarks

The first conclusion is that users do not know the reach of the use of the personal data obtained when using these services. Consequently, when they use them there is a lack of sufficient information on the processing of their data.

Although search engines apparently offer information on their privacy policies, it seems that they **do not emphasize them sufficiently and due to their complexity they prevents their exact understanding to users.**

Finally, search engines must guarantee the effective exercise of the rights of access, rectification, erasure and objection (specially the two last ones)

Therefore, it is necessary to take care of the right of erasure of data of the users, which are obtained in the search process as long as they are not against of the freedom of information.

It is also necessary to guarantee the right to object when there were legitimate ground relating to the particular situation and the maintenance of the information will be required by law.

Although the incorporation and initial use of certain personal information can be legitimate at their source, their universal and everlasting retention in the Internet may be disproportionate.

Ladies and gentleman, finally it is necessary to encourage the dialogue and to advance in the adoption of an international regulation of privacy standards.

Thank you very much.