Territorial Scope of Obligation to De-reference Based on the "Right to Be Forgotten"

Takehisa WATANABE

Department of Veterinary Public Health Nursing, Faculty of Veterinary Medicine,
Okayama University of Science,
1-3 Ikoi-no-oka, Imabari-shi, Ehime 794-8555, Japan

(Received October 27, 2021; accepted December 9, 2021)

Referencing the Google LLC case, this article aims to determine the territorial scope of the obligation to de-reference based on the "right to be forgotten", that is, whether a de-referencing must be carried out on all versions of a search engine or the versions of a search engine corresponding to all European Union (EU) Member States. Neither the judgment of the Google Spain case nor the General Data Protection Regulation define the territorial scope of the obligation to de-reference. Requiring a search engine to carry out a de-reference of all versions of its search engine does not conform to international law concerning jurisdiction and human rights. Therefore, requiring a search engine to carry out a de-reference of the versions of a search engine corresponding to all EU Member States only is justified. This conclusion causes a further problem of the effectivity to protect personal data. Requiring a search engine is insufficient to carry out a de-reference of the versions of that search engine corresponding to all EU Member States to the effective protection of personal data. Hence, harmonizing international law concerning jurisdiction and human rights, especially the freedom of expression and the effective protection of personal data, is needed. To achieve this harmonization, *the double defamation rule* and the agreement of the harmonization between the protection of personal data and the freedom of expression will be proposed in this paper. *The double defamation rule* is defined as when a de-referencing granted in the EU is permitted in a third state, that is, de-referencing is carried out on the version corresponding to that state. This rule can ensure the effective protection of personal data while avoiding the interference with the sovereignty of non-EU states. The agreement lays down the procedure to execute *the double defamation rule*. To promote transnational standards of data protection, *the double defamation rule* and the agreement would contribute to the development of common international law frameworks.

Keywords: obligation to de-reference; right to be forgotten; the Google LLC case (case C-507/17); extraterritorial jurisdiction to enforce.

1. Introduction

This article aims to determine the territorial scope of the obligation to de-reference based on the "right to be forgotten". According to Article 17 paragraph 1 of the European Union (EU) General Data Protection Regulation (GDPR),[1)] the data subject has the "right to be forgotten", which is "the right to obtain from the controller the erasure of personal data concerning him or her without undue delay".[2)] The controller must erase the personal data without undue delay where certain conditions are satisfied such as the personal data are no longer necessary in relation to the purposes for which they were collected or the personal data have been unlawfully processed when the right is exercised. In addition, exercising the "right to be forgotten" is allowed if the personal data is processed in the context of the activity of an establishment of a controller or a processor in the EU, according to Article 3 paragraph 1 of the GDPR, regardless of whether the processing takes place in the Union or not.[3)]

However, the GDPR does not define the territorial scope of the obligation to de-reference. When the scope of the obligation is narrow, the protection of personal data appears to be insufficient in the EU. On the other hand, when the scope of the obligation is wide, the freedom of expression is infringed in non-EU states. As Samonte pointed out, in the Google LLC Case,[4] the court faced a difficulty in choosing between upholding a global application to ensure full protection of personal data and upholding a regional application to avoid encroaching on the sovereignty of non-EU states.[5]

Accordingly, determining the territorial scope of the obligation to de-reference while harmonizing between the protection of personal data and the freedom of information is necessary. This article tries to determine the territorial scope of the obligation to de-reference referencing the Google LLC Case.

2. Google LLC Case

2-1 Fact

On May 21, 2015, the Commission Nationale de l'Informatique et des Libertés (CNIL) (French Data Protection Authority) ordered Google that the removal must apply to all its search engine's domain name extensions when granting a request from a natural person for links to web pages to be removed from the list of results displayed following a search conducted on the basis of that person's name.[6] However, Google refused that order, confining itself to removing the links in question from only the results displayed following searches conducted from the domain names corresponding to the versions of its search engine in the Member States.[7] Moreover, the CNIL regarded Google's further "geo-blocking" proposal insufficient, whereby Internet users would be prevented from accessing the results at issue from an Internet Protocol address deemed to be located in the state of residence of a data subject after conducting a search on the basis of that data subject's name, no matter which version of the search engine they used.[8] Therefore, the CNIL imposed a penalty of EUR 100,000 on Google because Google had failed to comply with that order.[9] Google appealed to the Conseil d'État (Council of State, France) for the annulment of that adjudication.[10] The Conseil d'État referred the questions about the territorial scope of the search engine operator's obligation to de-reference based on the "right to be forgotten" to the Court of Justice of the European Union (CJEU) for a preliminary ruling, that is to say, whether Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive) are to be interpreted as meaning that, where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is required to de-reference all versions of its search engine or whether, on the contrary, that operator is required to do so only on the versions of that search engine corresponding to all the Member States, or even only on the version corresponding to the Member State in which the request for de-referencing was made, using, where appropriate, the technique is known as "geo-blocking".[11]

2-2 Opinion of Advocate General Szpunar

Advocate General Szpunar proposed that a search engine operator is not required, when granting a request for de-referencing, to operate that de-referencing on all the domain names of its search engine in such a way that the links at issue no longer appear, regardless of the place from which the search on the basis of the requester's name is carried out, but required to delete the links at issue from the results displayed following a search carried out on the basis of the requester's name in a place located in the EU, especially by the "geo-blocking" technique.[12]

He pointed out that under Article 52(1)[13] of the Treaty on European Union, the Treaties are to apply to the 28 Member States, and outside that territory, EU law cannot, in principle, apply or, consequently, create rights and obligations.[14] He noted that the question is whether an exceptional reason for the extension of the scope of Directive beyond the territorial border exists.[15] He denied the existence of an exceptional reason mainly for the following reasons. He pointed out that the EU authorities would not be in a position to define and determine a right to receive information, still less to strike a balance between that right and the other fundamental rights to

data protection and to private life, because such a public interest in having access to information will necessarily vary from one third State to another.[16] Moreover, he pointed out that there would be a danger that the European Union would prevent individuals in non-EU states from having access to information, because the order of de-referencing on a worldwide scale by an authority within the European Union comes to an inevitable signal to non-EU states, which could also order de-referencing under their own laws.[17]

However, he pointed out that the operator of a search engine must ensure, within the framework of its responsibilities, powers, and capabilities, that the activity of that search engine meets the requirements of the Directive in order that the guarantees laid down by that directive may have full effect and that effective and complete protection of data subjects, in particular, of their right to privacy, may actually be achieved, which was upheld by the Court in the judgment in Google Spain Case.[18] He, therefore, pointed out that the operator must take all steps available to him to ensure effective and complete de-referencing, which includes the technique known as "geo-blocking".[19] In addition, he pointed out that the de-referencing must be carried out not at national level but at EU level, because the Directive seeks to establish a complete system of data protection that transcends national borders to ensure a high level of protection in the EU.[20] Therefore, he proposed that the operator of a search engine is required to delete the links at issue from the results displayed following a search carried out on the basis of the requester's name in a place located in the EU, and that operator is required to take all steps available to him to ensure effective and complete de-referencing, which includes the technique known as "geo-blocking".[21] The background of his opinion is the importance of balancing between the "right to be forgotten" and other fundamental rights.[22]

Nevertheless, it should be noticed that he admitted the possibility for EU law to require a search engine to take action at worldwide level.[23]

2-3 Judgment

The Court pointed out that the existence of a competence on the part of the EU legislature to lay down the obligation, for a search engine operator, to carry out, when granting a request for de-referencing made by such a person, a de-referencing on all the versions of its search engine is justified for the following reasons.[24] A de-referencing carried out on all the versions of a search engine would meet the objective of Directive and GDPR, which is to guarantee a high level of protection of personal data throughout the EU.[25] Because, in a globalized world, Internet users' access—including those outside the Union—to the referencing of a link referring to information regarding a person whose center of interests is situated in the Union is thus likely to have immediate and substantial effects on that person within the Union itself.[26]

However, the Court emphasized that numerous non-EU states do not recognize the right to de-reference or have a different approach to that right.[27] Moreover, the Court pointed out that the balance between the right to privacy and the protection of personal data, on the one hand, and the freedom of information of Internet users, on the other, is likely to significantly vary around the world.[28] Moreover, the Court pointed out that the EU legislature has not, to date, struck such a balance as regards the scope of a de-referencing outside the Union[29] and pointed out the EU legislature would not have explicitly intended to impose on an operator a de-referencing obligation that also concerns the national versions of its search engine that do not correspond to the Member States.[30]

Therefore, the Court concluded that there is no obligation under EU law, for a search engine operator who grants a request for de-referencing made by a data subject, as the case may be, following an injunction from a supervisory or judicial authority of a Member State, to carry out such a de-referencing on all the versions of its search engine.[31]

The Court pointed out that the de-referencing in question is, in principle, supposed to be carried out in respect of all the Member States, because the EU legislature has chosen to lay down the rules concerning data protection by way of a regulation, which is directly applicable in all the Member States, in order to ensure a consistent and high level of protection throughout the EU and to remove the obstacles to flows of personal data within the Union.[32]

For the aforementioned reasons, the Court concluded that, on a proper construction of Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive and Article 17(1) of GDPR, where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is not required to carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States.[33)]

However, it should be noted that the Court, like the Advocate General, emphasized that EU law does not prohibit requiring the de-referencing on all versions of a search engine.[34)] The Court found that a supervisory or judicial authority of a Member State remains competent to weigh up, in the light of national standards of protection of fundamental rights a data subject's right to privacy and the protection of personal data concerning him or her, on the one hand, and the right to freedom of information, on the other, and, after weighing those rights against each other, to order, where appropriate, the operator of that search engine to carry out a de-referencing concerning all versions of that search engine.[35)]

3. Territorial Scope of the Obligation to De-reference

3-1 Necessity of Consideration Based on International Law

As the Advocate General pointed out, the EU law cannot, in principle, create rights and obligations outside the territory of the Member State.[36)] The problem of whether a de-referencing must be carried out on all versions of a search engine or the versions of a search engine corresponding to all the Member States is caused between the EU and the non-EU states. Therefore, this problem is under international law, especially concerning jurisdiction (or sovereignty) and human rights.

3-2 Consideration Based on International Law Concerning Jurisdiction (or Sovereignty)

Not only the Advocate General but also the CJEU did not grant to require a search engine to carry out a de-referencing on all versions of its search engine. It seems that this was caused by the character of jurisdiction. According to the Restatement of the Law Third,[37)] section 401, jurisdiction is categorized as follows:

"Under international law, a state is subject to limitations on

(a) jurisdiction to prescribe, i.e., to make its law applicable to the activities, relations, or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination of a court;

(b) jurisdiction to adjudicate, i.e., to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, whether or not the state is a party to the proceedings;

(c) jurisdiction to enforce, i.e., to induce or compel compliance or punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other nonjudicial action."

To require a search engine to de-reference all versions of its search engine is the exercise of jurisdiction to enforce according to this categorization because a search engine was compelled to de-reference a link.[38)]

The exercise of jurisdiction to enforce is strictly territorially restricted under international law, because the extraterritorial exercise of jurisdiction to enforce causes interference with the sovereignty of other states.

In the Case of the S. S. "Lotus," the Permanent Court of International Justice (PCIJ) declared the following:

"Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention."[39)]

This strict territoriality of jurisdiction to enforce is now remaining.[40)]

All Internet users outside the EU will be unable to reference the link if the link is de-referenced on the versions of a search engine corresponding to the non-EU States. This means that the EU imposes its policy about balancing the protection of personal data and the freedom of expression on the non-EU states. As Alsenoy and Koekkoek pointed out, "each State is free to decide how to balance privacy and freedom of expression."[41)] No

rule on balancing the protection of personal data and the freedom of expression under international law exists. In the Case of the S.S. "Lotus," the PCIJ declared the following:

> "International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."[42)]

Hence, how to balance the protection of personal data and the freedom of expression is a matter of sovereignty. Therefore, that the EU imposes its balancing policy on non-EU states is an interference with the sovereignty of non-EU states. It seems that not only the Advocate General but also the CJEU considered that requiring a search engine to carry out a de-reference of all versions of its search engine results in the interference of sovereignty of the non-EU states.

The Advocate General pointed out the variation of public interest in having access to information.[43)] The CJEU pointed out the variation of the balance between the right to privacy and the protection of personal data, on the one hand, and the freedom of information of Internet users, on the other.[44)] These seem to point out the necessity for the consideration of sovereignty of non-EU states about balancing between the protection of personal data and the freedom of expression.

Considering the above, because of the interference of sovereignty of the non-EU states, to require a search engine to carry out a de-referencing of all versions of its search engine is the extraterritorial exercise of jurisdiction to enforce and that is incompatible with international law. It seems that both the Advocate General and the CJEU also came to the same conclusion. Moreover, some other qualified authors have reached the same conclusion.[45)]

Some authors criticized the opinion and judgment based on Article 3 paragraph 2 of the GDPR.[46)] However, it seems that these criticisms overlooked the difference of the character of jurisdiction. The GDPR is extraterritorially applied based on Article 3 of the GDPR. This application is the exercise of jurisdiction to prescribe. In contrast to jurisdiction to enforce, the extraterritorial exercise of jurisdiction to prescribe is active under international law.[47)] One of the reasons is that the degree of the interference of the sovereignty of other states by the extraterritorial exercise of jurisdiction to prescribe is lower than the extraterritorial exercise of jurisdiction to enforce. For example, the interference of the sovereignty of the non-EU states does not occur when the "right to be forgotten" is exercised against a search engine operator outside the EU under the GDPR, that is an extraterritorial application of the GDPR, if a de-referencing is carried out only on the versions of a search engine corresponding to all the Member States. Thus, the extraterritorial application of the GDPR does not necessarily cause the infringement of the sovereignty of non-EU states.

Moreover, requiring a search engine to carry out a de-referencing is the exercise of jurisdiction to enforce as previously mentioned. In the aforementioned case, if a de-referencing is carried out on all versions of a search engine, the interference of the sovereignty of the non-EU states would occurs.

For the aforementioned reasons, it cannot be justified to require a search engine to carry out a de-referencing on all versions of its search engine based on Article 3 paragraph 2 of the GDPR.

Further, Ryngaert and Taylor pointed out that "The character of data protection as a fundamental right may create particular obligations for the EU to protect the right to data protection extraterritorially."[48)] As a reason for this, they pointed out the absence of a limiting jurisdictional clause of the EU Charter on Fundamental Rights.[49)]

However, the obligation to protect the right to data protection extraterritorially under the EU Charter on Fundamental Rights only belongs to the EU, not to the non-EU states. This obligation, therefore, cannot justify the interference of the sovereignty of the non-EU states.

Some authors also emphasized that both the Advocate General and the CJEU considered that EU law does not prohibit requiring a search engine to carry out a de-referencing on all versions of its search engine.[50)] The amendment to the GDPR may make it possible to require a search engine to carry out a de-referencing on all versions of its search engine according to this view. However, this does not mean that requiring a search engine

to carry out a de-referencing on all versions of its search engine under international law is possible, because the amendment of GDPR does not affect the obligation of the non-EU states.

Additionally, some authors asserted that the CJEU admitted a supervisory or judicial authority of a Member State can order a search engine operator to carry out a de-referencing concerning all versions of that search engine based on domestic law, according to para. 72 of the judgment.[51] For example, Samonte stated that 'the Court leaves open the possibility for France's CNIL and other national DPAs to require global de-referencing in cases where they deem it necessary'.[52] However, both the EU and the Member States are restricted equally to the exercise of jurisdiction by international law. If the EU cannot require to de-reference, the Member States cannot also.

3-3 Consideration Under International Law Concerning Human Rights

In some cases, to require a search engine to carry out a dereferencing on all versions of its search engine causes the serious infringement of the freedom of expression, according to the Advocate General. He pointed out that to order de-referencing on a worldwide scale has "a genuine risk of a race to the bottom, to the detriment of freedom of expression, on a European and worldwide scale."[53] Globocnik explained this risk. He pointed out that a decision for global de-referencing could set a dangerous precedent if authoritarian regimes introduced such a right, blocking access to information in the EU.[54] For example, the Data Protection Authority or the court of an authoritarian state orders to globally de-reference a link to a website on a search engine operator. This website includes an article about the large-scale human rights violations by the authoritarian government. It would be difficult for everyone, including outside the EU, to reference such a website. That is a serious infringement of the freedom of expression, a human right admitted under international law. For example, the International Covenant on Civil and Political Rights, Article 19 section 2 provides "Everyone shall have the right to freedom of expression." In some cases, therefore, to require a search engine to carry out a de-referencing on all versions of its search engine results in the infringement of international law about human rights, especially the freedom of expression.

3-4 Territorial Scope of the Obligation to De-reference and a Further Problem

As mentioned above, requiring a search engine to de-reference all versions of its search engine does not conform to international law concerning jurisdiction and human rights. Thus, requiring a search engine to carry out a de-referencing on the versions of a search engine corresponding to all the Member States only is justified. It seems that this conclusion becomes clear in the opinion and judgment.

However, this conclusion causes a further problem of the effectiveness of personal data protection. It seems to clear that to require a search engine to carry out a de-referencing on the versions of that search engine corresponding to all the Member States is insufficient to the effective protection of personal data.

The CJEU pointed out that "It is true that a de-referencing carried out on all the versions of a search engine would meet that objective in full."[55] The CJEU stated that "In a globalised world, internet users' access—including those outside the Union—to the referencing of a link referring to information regarding a person whose centre of interests is situated in the Union is thus likely to have immediate and substantial effects on that person within the Union itself."[56] Such insufficiency is pointed out by some authors.[57]

The Article 29 Data Protection Working Party also stated the following:

> "Although concrete solutions may vary depending on the internal organization and structure of search engines, de-listing decisions must be implemented in a way that guarantees the effective and complete protection of these rights and that EU law cannot be easily circumvented. In that sense, limiting de-listing to EU domains on the grounds that users tend to access search engines via their national domains cannot be considered a sufficient means to satisfactorily guarantee the rights of data subjects according to the judgment. In practice, this means that in any case de-listing should also be effective on all relevant domains, including.com."[58]

In particular, the insufficiency of "geo-blocking" is emphasized.[59] For example, Alsenoy and Koekkoek

pointed out the following:

"A significant limitation of geographic filtering tools, however, is that none of them are completely effective. Anyone willing to invest a little time and money can often circumvent them quite easily (e.g., by using a proxy server)."[60)]

It has become clear that there is a need to harmonize between international law concerning jurisdiction and human rights in the Google LLC Case, especially the freedom of expression, on the one hand, and the effective protection of personal data, the other.

4. Proposal to Harmonize: *The Double Defamation Rule* and Agreement of the Harmonization between the Protection of Personal Data and Freedom of Expression

How should the problem of harmonization mentioned above be resolved?

Svantesson made an interesting proposal for "Model Code Determining the Geographical Scope of Delisting under the Right to Be Forgotten."[61)] It seems that by refining Article 2 of the Model Code,[62)] the problem of harmonization can be solved. That is *the double defamation rule*. The rule is that de-referencing is carried out on the version corresponding to that state when a de-referencing granted in the EU is permitted in third state. As a concrete procedure, that search engine refers to the court of that state whether that de-reference is permitted under the law of that state when a search engine is required to de-reference on the version corresponding to a third state. When the court, thereafter, permits that de-reference, that search engine carries out that de-reference on the version corresponding to that state.

The decision-maker regarding to de-referencing is different between the Model Code and *the double defamation rule*. Either a search engine operator or an authority of a Member State decides whether to de-reference under the Model Code. A court of a non-EU state decides under *the double defamation rule*. The former may interfere with the sovereignty of non-EU states, because both authorities cannot consider precisely the policy of non-EU states about balancing between the protection of personal data and the freedom of expression.[63)] However, the de-referencing carried out on the version corresponding to the state permitting that de-referencing does not interfere with the sovereignty of that state under *the double defamation rule*, because that de-reference harmonizes the policy of that state about balancing between the protection of personal data and the freedom of expression. Moreover, the effectiveness to protect personal data would come to higher, because the de-referencing is carried out outside the EU.

For *the double defamation rule* to become effective, the agreement between the EU and the third states would be needed, which lays down the procedure mentioned above, that is, the agreement of the harmonization between the protection of personal data and the freedom of expression.

5. Conclusion

The territorial scope of the obligation to de-reference based on the "right to be forgotten" is restricted to the versions of a search engine corresponding to all the Member States under international law. This scope is clearly insufficient for the effective protection of personal data. To solve this dilemma, the author proposes *the double defamation rule*. In addition, the agreement of the harmonization between the protection of personal data and the freedom of expression would be needed for this rule to come to be effective. Harmonizing the policies of each state for balancing between the protection of personal data and the freedom of expression is inevitable. This harmonization would be achieved by the conclusion of such treaties between the EU and many non-EU states.

Fabbrini and Celeste pointed out that "states should seek to develop common international law frameworks, which promote transnational standards of data protection."[64)] *The double defamation rule* and the agreement of the harmonization between the protection of personal data and the freedom of expression would contribute to the development of common international law frameworks.

Acknowledgement

The author would like to thank Enago (www.enago.jp) for English language review.

References

1) L119(2016), *Official Journal of the European Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)*.

2) *GDPR Article 17 Right to erasure (‘right to be forgotten’)*

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
(a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
(b) 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;
(c) 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);
(d) the personal data have been unlawfully processed;
(e) 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;
(f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

3) *GDPR Article 3 Territorial scope*

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

4) Case C-507/17, *Google LLC, successor in law to Google Inc., v Commission nationale de l’informatique et des libertés (CNIL)*, Judgment of the court (Grand Chamber), 24 September 2019.

5) Mary Samonte, ‘Google v. CNIL: The Territorial Scope of the Right to Be Forgotten Under EU Law’, *European Papers*, vol. 4, no. 3, (2019), p. 844.

6) Judgment of the Google LLC Case, *supra* note (4), para. 30.

7) *Ibid*., para. 31.

8) *Ibid*., para. 32.

9) *Ibid*., para. 33.

10) *Ibid*., para. 34.

11) *Ibid*., para. 39. In addition, the Conseil d’État referred the question that a search engine operator is required, only to remove the links at issue from the results displayed following a search conducted on the basis of the requester’s name on the domain name corresponding to the State in which the request is deemed to have been made or, more generally, on the domain names distinguished by the national extensions used by that search engine for all of the Member States to the Court of Justice (*ibid*.). But during the proceedings before the Court, following the bringing of the request for a preliminary ruling, Google has implemented a new layout for the national versions of its search engine, in which the domain name entered by the internet user no longer determines the national version of the search engine accessed by that user, and then the internet user is now automatically directed to the national version of Google’s search engine that corresponds to the place from where he or she is presumed to be conducting the search, and the results of that search are displayed according to that place, which is determined by Google using a geolocation process(*ibid*. para 42). That question, therefore, came to meaningless. See also, Evelyn Kao, ‘Making search results more local and relevant’, Google: The Keyword, October 27, 2017, (URL: https://www.blog.google/products/search/making-search-results-more-local-and-relevant/), accessed October 26, 2021. Furthermore, the Court examined the questions referred in the light of both directive95/46 and GDPR in order to ensure that its answers will be of use to the referring court in any event (Judgment of the Google LLC Case, *supra* note (4), para 42).

12) ECLI:EU:C:2019:15, *Opinion of Advocate General Szpunar, delivered on 10 January 2019, Case C-507/17, Google LLC, successor to Google Inc. v Commission nationale de l’informatique et des libertés (CNIL)*, para. 79.

13) *The Treaty on European Union*, Article 52(1)

The Treaties shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic

of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

14) Opinion of Advocate General Szpunar, *supra note* (12), para. 47.

15) *Ibid*., para. 48.

16) *Ibid*., para. 60.

17) *Ibid*., para. 61.

18) *Ibid*., para. 73. In the Google Spain Case, the Court stated the following:

> “Inasmuch as the activity of a search engine is therefore liable to affect significantly, and additionally compared with that of the publishers of websites, the fundamental rights to privacy and to the protection of personal data, the operator of the search engine as the person determining the purposes and means of that activity must ensure, within the framework of its responsibilities, powers and capabilities, that the activity meets the requirements of Directive 95/46 in order that the guarantees laid down by the directive may have full effect and that effective and complete protection of data subjects, in particular of their right to privacy, may actually be achieved.” (Case C-131/12, *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González*, Judgment of the Court (Grand Chamber), 13 May 2014, para. 38).

19) Opinion of Advocate General Szpunar, *supra* note (12), para. 74.

20) *Ibid*., paras. 75-76. In addition, he pointed out that under the GDPR that question would not even arise, since that regulation is to be directly applicable in all Member States (*ibid*. para 77).

21) *Ibid*., para. 78.

22) *Ibid*., para. 57.

23) *Ibid*., para. 62.

24) Judgment of the Google LLC Case, *supra* note (4), para. 58.

25) *Ibid*., paras. 54-55.

26) *Ibid*., para. 57.

27) *Ibid*., para. 59.

28) *Ibid*., para. 60.

29) *Ibid*., para. 61.

30) *Ibid*., para. 62.

31) *Ibid*., para. 64.

32) *Ibid*., para. 66.

33) *Ibid*., para. 73.

34) *Ibid*., para. 72.

35) *Ibid*.

36) Opinion of Advocate General Szpunar, *supra* note (12), para. 47.

37) The American Law Institute, *Restatement of the Law Third, The Foreign Relations Law of the United States*, (American Law Institute Publishers 1987).

38) Dan Jerker B. Svantesson, ‘“Lagom Jurisdiction” – What Viking Drinking Etiquette Can Teach Us About Internet Jurisdiction and Google France’, Masaryk University Journal of Law and Technology, vol.12, issue 1(2018), p. 40.

39) *The Case of the “Lotus”*, Judgment, 7 September 1927, Publications of the Permanent Court of International Justice, series A, No. 10, pp. 18-19.

40) Anthony J. Colangelo, ‘What Is Extraterritorial Jurisdiction’, *Cornell Law Review*, volume 99, Issue 6(2014), pp. 1311-1312.

41) Brendan Van Alsenoy and Marieke Koekkoek, ‘The Extra-Territorial Reach of the EU’s “Right to Be Forgotten”’, *The Interdisciplinary Centre for Law and ICT Working Paper*, No. 20(2015), p. 5.

42) *The Case of the “Lotus”*, *supra* note (39), p. 18.

43) Opinion of Advocate General Szpunar, *supra* note (12), para. 60.

44) Judgment of the Google LLC Case, *supra* note (4), para 60.

45) Dan Jerker B. Svanteson, ‘Delineating the Reach of Internet Intermediaries’ Content Blocking – “ccTLD Blocking”, “Strict Geo-location Blocking” or a “Country Lens Approach”?’, *SCRIPTed*, vol. 11, issue 2 (2014), p. 168 and *supra* note (38), p. 40-41; Brendan Van Alsenoy

and Marieke Koekkoek, *supra* note (41), p. 21; Cedric Ryngaert and Mistale Taylor, 'The GDPR As Global Data Protection Regulation?', *AJIL Unbound*, vol. 114(2020) pp. 7-8.

46) Mary Samonte, *supra* note 5, p. 847; Jure Globocnik, 'The Right to Be Forgotten is Taking Shape: CJEU Judgments in GC and Others (C-136/17) and Google v CNIL (C-507/17)', *GRUR International*, vol. 4, Issue 4(2020), p. 386.

47) Anthony J. Colangelo, *supra* note (40), pp. 1311-1312.

48) Cedric Ryngaert and Mistale Taylor, *supra* note (45), p. 6.

49) *Ibid*.

50) Jure Globocnik, *supra* note (46), p. 387; Cedric Ryngaert and Mistale Taylor, *supra* note (45), p. 7; Opinion of Advocate General Szpunar, *supra* note (12), para. 62; Judgment of the Google LLC Case, *supra* note (4), para. 72.

51) Jure Globocnik, *supra* note (46), p. 387, note 83.

52) Mary Samonte, *supra* note (5), p. 845.

53) Opinion of Advocate General Szpunar, *supra* note (12), para. 61.

54) Jure Globocnik, *supra* note (46), p. 386.

55) Judgment of the Google LLC Case, *supra* note (4), para. 55.

56) *Ibid*., para. 57.

57) Federico Fabbrini and Edoardo Celeste, 'The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders', *German Law Journal*, vol. 21(2020), p. 64; Cedric Ryngaert and Mistale Taylor, *supra* note (45), pp. 6-7.

58) Article 29 Data Protection Working Party, 'Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain and Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González" - C-131/12', WP225(2014), p. 9.

59) Dan Jerker B. Svantesson, *supra* note (45), p. 164; Giorgia Bevilacqua, 'The Territorial Scope of the Right to Be Forgotten Online in the Opinion of the Advocate General on the Case Google CNIL', *European Papers*, vol. 4, No. 2(2019), p. 656; Jure Globocnik, *supra* note (46), p. 385.

60) Brendan Van Alsenoy and Marieke Koekkoek, *supra* note (41), p. 19.

61) Dan Jerker B. Svantesson, 'The Google Spain case: Part of a harmful trend of jurisdictional overreach', *EUI Working Paper*, RSCAS 2015/45(2015), pp. 17-19.

62) "*Article 2 – Harmonised laws*: Where a delisting request has been approved for the EU domains, and the request includes evidence that delisting could be ordered under the laws of a non-EU State in relation to that State's domain, the delisting should be extended to such a domain." (*ibid*., p. 17).

63) Alsenoy and Koekkoek asserted the reasonableness (the strength of connection with the EU or non-EU states) to resolve the problem of this section (in 'Internet and jurisdiction after Google Spain: the extraterritorial reach of the "right to be delisted"', *International Data Privacy Law*, vol. 5. issue 2 (2015), pp. 24-25). However, the same criticism applies to this solution.

64) Federico Fabbrini and Edoardo Celeste, *supra* note (57), p. 65.