The right to de-listing in questions

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Who can exercise it? How? What are its limitations? What can you do in the event of refusal? When should you contact the CNIL?

What is de-listing?

De-listing enables removal of one or more results provided by a search engine following a request based on an individual's identity (surname and first name).

Such removal does not delete the information from the source website: the original content remains unchanged and is still accessible using other search criteria or by going directly to the website that originally published it.

Where did the right to de-listing originate?

The right to de-listing was recognised by the Court of Justice of the European Union (CJEU) in 2014. The Court ruled that anybody had the right to request companies operating search engines to de-list results connected with their identity, subject to certain conditions and in particular to the public interest of having access to such information.

The right was enshrined in the General Data Protection Regulation, which came into force on 25 May 2018.

The scope and limitations of the right to de-listing were then specified by the CJEU in two new rulings of 24 September 2019, made in response to a request from France's Council of State. On 6 December 2019, the Council issued thirteen decisions drawing on the CJEU's

How do you exercise the right?

You can request search engines to de-list a result that violates your privacy.

To do so, you must complete the forms available online on search-engines' websites, or write to them.

In order for your request to be taken into account, you must include the web address (URL) of the result in question (to do this, right click on the result link and select "copy link address"). You must also state the reasons for making the request.

Consult the sheet: de-indexing content in a search engine.

Do search engines always have to agree to a de-listing request?

No. The right to de-listing is not automatic and search engines are not always obliged to agree to a de-listing request.

Search engines must assess on a case-by-case basis whether to act on a de-listing request or, given the circumstances, refuse to comply with it.

In each case, such assessment consists of finding a balance between protection of the requesting party's privacy and data on the one hand and internauts' right to information on the other.

Such balancing is based on consideration of a number of criteria specified by the CJEU and France's Council of State in their rulings of 24 September and 6 December 2019.

What criteria enable search engines to assess requests on a case-by-case basis?

Assessment is based on the right to de-listing criteria set by the CJEU in 2014 and specified in 2019.

The criteria are as follows:

- the prominence and function of the individual concerned (his/her role in public life);
- the age of the individual concerned (was he/she a minor at the time of publication?);
- the nature of the content in question, its objectiveness, accuracy and source (is it public information by nature, professional, or having to do with the private sphere? Does it consist of rumours disseminated by a single blog or of several press articles whose content has been checked?);
- the conditions and date of the content's uploading: was it published by the individual him/herself? Could the person concerned reasonably expect it to be made public? Was it published for journalistic purposes? Does it meet a legal obligation? Is it accessible via a search carried out using search terms other than the surname and first name of the person concerned?);
- any repercussions that its listing is likely to have for the person concerned (Obstacle to possible social reintegration or finding a job? Safety risk? etc.);

Is the right to de-listing systematic if "sensitive data" is concerned?

The CJEU emphasised that, in the balance between protection of privacy and freedom of information on the internet, sensitive data (political opinion, religious beliefs, sexual life and orientation, racial or ethnic origin, etc.) must be given special weight. It impacts personal privacy and so deserves extra protection.

The Court therefore deems that the presence of sensitive data in indexed content should in principle lead to its de-listing, except if it appears "strictly necessary" to public information.

Such strict necessity is assessed by the search engine when a de-listing request is made.

However, the Court specifies that the special protection provided to sensitive data cannot be the same when it is clear that the data in question was made public by the concerned person him/herself.

Is the right to de-listing systematic if data includes offences and criminal convictions?

The CJEU deemed that results referring to data bearing on offences and criminal convictions should also be paid special attention and be given extra weight in the balance between protection of the requesting party's privacy and freedom of information on the internet. Processing of such data is strictly regulated by data protection rules.

As with sensitive data, the Court deemed that the presence of data bearing on offences and criminal convictions should in principle be de-listed, except if the data in question appears "strictly necessary" to public information.

It therefore specified the criteria to be taken into account in dealing with requests to de-index such data:

- the nature and seriousness of the offence;
- whether proceedings are ongoing, their outcome and the stage in the proceedings to which the information refers;
- how much time has elapsed;
- the role played by the individual in public life and his/her past behaviour;
- public interest at the time the request is made;
- the content and form of the publication as well as any repercussions it might have for the individual concerned.

In some cases, the search engine may be obliged to organise the list of results in order to ensure that at least the first result leads to up-to-date information on the legal situation of the person concerned.

What geographical reach does de-listing have?

In principle, de-referencing is restricted to the European territory. Because the de-referencing is not global, a search engine provider does not have to systematically delist results on all versions of its engine around the world.

Nonetheless, the Court of Justice of the European Union has underlined that European law does not forbid a Member State to provide for a de-referencing with a global scope and make impossible for internet users to access to a delisted link from the identity of the data subject, whatever their research location in the world.

However, in France, the French Council of State considers that the CNIL could only order such de-referencing beyond the European territory in the event where a law would foresee it. No law provides for it to date.

Furthermore, if it was foreseen by the law, such global de-referencing would not be systematic. The CNIL should, on a case-by-case basis, weigh up between, on the one hand, the particular serious violation of the data subject's rights to privacy and to the protection of his or her personal data, and, on the other hand, the right to freedom of information.

What can you do if the search engine refuses your request?

In the event of a search engine refusing to de-list content, the individuals concerned can turn to the CNIL or the courts. However, contesting a refusal to de-list via the CNIL or a court does not necessarily mean you will obtain satisfaction.

Send a complaint to the CNIL.

What role does the CNIL play?

European data protection authorities wanted to provide a framework for implementation of the 2014 ruling as rapidly as possible, and adopted:

- a reference grid made available to search engines;
- a list of common criteria enabling them to examine the complaints they receive following a search engine's refusal to de-list.

When a refusal to de-list content is referred to it, the CNIL checks to see whether the search result is still indexed and then analyses the reasons put forward by the requesting party and the grounds for refusal put forward by the search engine.

The CNIL then weighs the two arguments in order to determine whether or not, in its opinion, the search result in question should be de-listed.

If its response is negative, in particular due to the overriding public interest of access to the information, the CNIL informs the person concerned.

If its response is positive, the CNIL requests the search engine to de-list the result in question, giving reasons for its request. If the search engine again refuses to de-list the result, the CNIL may use all its powers to force the company operating the search engine to do so (formal notice, injunction under penalty of law, or fine). Depending on the situation, the CNIL may take action in such cases in cooperation with its European counterparts.

Infographics – De-listing search-engine content concerning me

[INFOGRAPHIC] - De-listing search-engine content concerning me
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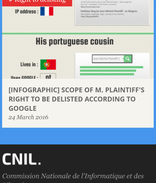

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#Right to delisting

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