

# The Right to be Forgotten

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# Presenter

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Melissa is a barrister specialising in data protection and privacy. She represents individuals, companies, public bodies, and not-for-profit organisations on both contentious and non-contentious issues. Melissa recently wrote a book on the right to be forgotten, available at Law Brief Publishing and Amazon. She writes on topics related to data and privacy on her blog [www.privacylawbarrister.com](http://www.privacylawbarrister.com) and produces two podcast series: 'privacy law barrister' and 'the data optimist', both available on iTunes and Spotify.

# Disclaimer

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This webinar is for reference purposes only and is not intended to constitute, or be a source of legal advice. It should not be used as a substitute for professional legal advice.

# Agenda

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- The origin of the right to be forgotten ('RTBF').
- The difference between the RTBF, the right to delisting and the right to erasure in Article 17 of the GDPR/UK GDPR.
- What can be forgotten/delisted/erased and who can apply.
- What are the grounds to make a successful request.
- When a request can be refused.
- Some practical considerations.
- Cases.
- Q&A.

# Basic Data Protection Terminology

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- Personal data
- Data subject
- Controller
- Data processing
- The data protection principles

## Principles

I. Lawfulness, Fairness and Transparency

II. Purpose Limitation

III. Data Minimisation

IV. Accuracy

V. Storage Limitation

VI. Integrity and Confidentiality (security)

VII. Accountability

# The origin of the Right to be Forgotten

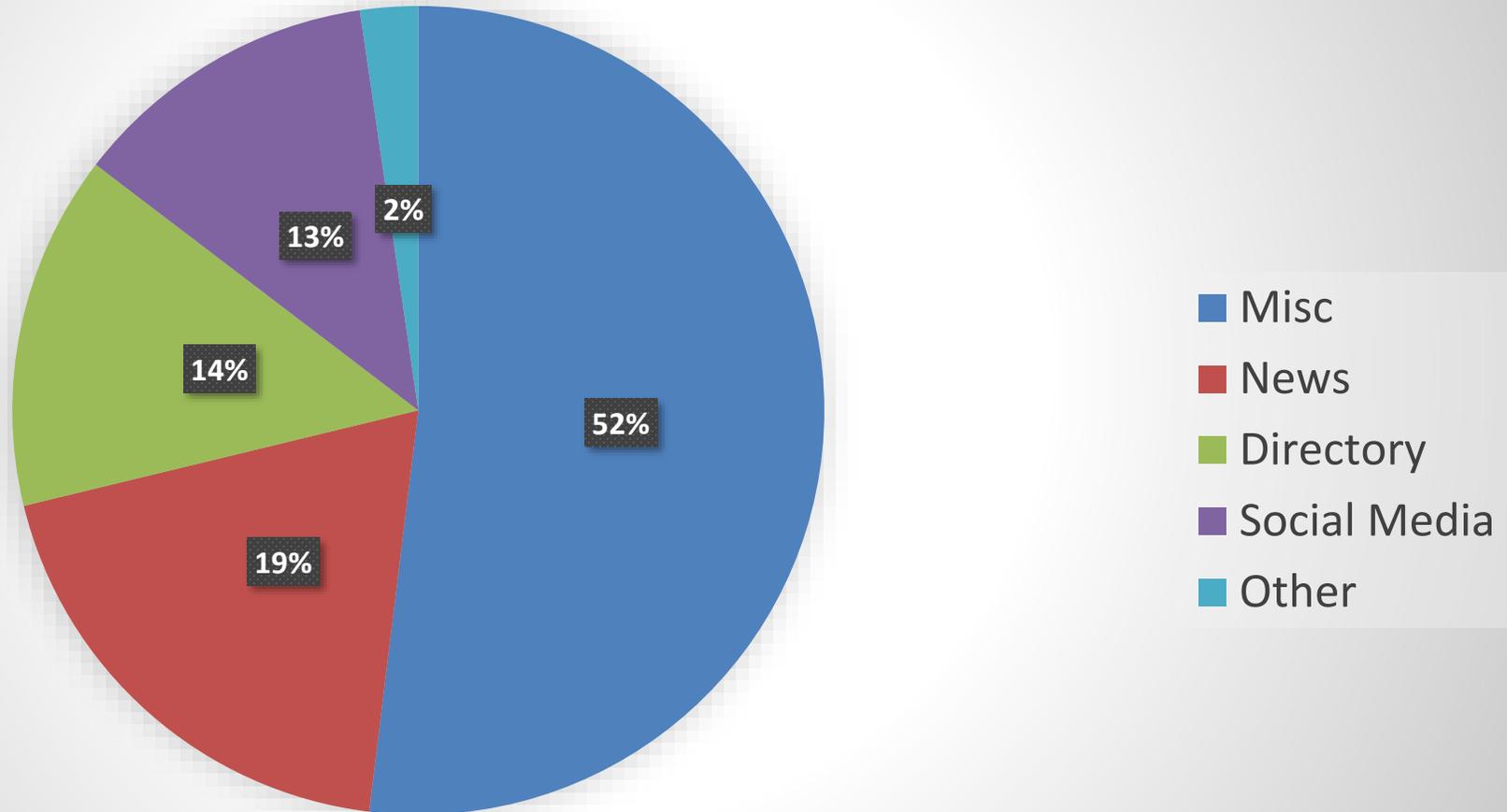
🔗 *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González, Court of Justice (Grand Chamber), Case C-131/12, 13 May 2014*

🔗 The significant points from the ruling:

- 1) A search engine is a controller for the purposes of data protection.
- 2) The processing must give effect to Articles 7 (respect for private and family life) and 8 (protection of personal data) of the Charter of Fundamental Rights of the European Union.
- 3) This requires an analysis of the rights of the data subject, the controller, but also of others whose rights might be engaged.
- 4) Even if the processing was initially lawful and accurate, it may become incompatible with the Data Protection Directive over time, where the processing becomes 'inadequate, irrelevant, or excessive in relation to those initial purposes'.

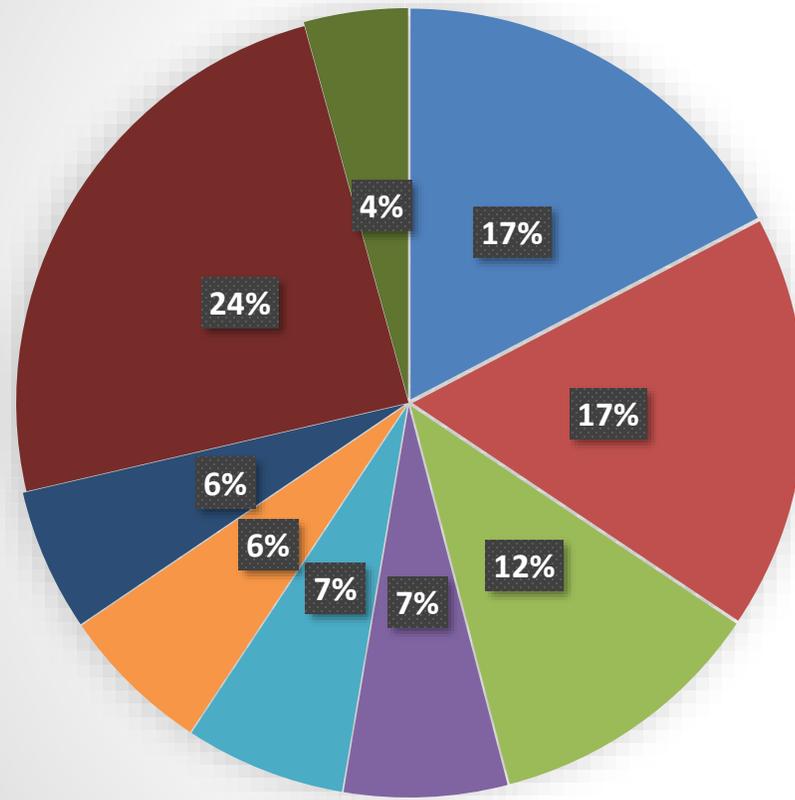
# Google Statistics:

Categories of websites requested for delisting



# Google Statistics:

Categories of content requested for delisting



- Professional information
- Name not found
- Misc
- Self-authored
- Crime
- Professional wrongdoing
- Personal information
- Insufficient information
- other

# The RTBF v the Right to Delisting

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## • What is the difference?

- The *Google Spain* case was essentially a delisting request. Delisting applies where the controller can de-link the information from the processing but cannot delete the information itself.
- ‘The Right to be forgotten’ was a phrase used in submissions to the court, but not the judgment itself.
- The GDPR extends the concept in *Google Spain*: Article 17 GDPR ‘right to erasure’.
- Two aspects to RTBF: erasure or delisting.

# Request to Delist

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After *Google Spain* (pre-GDPR): Article 29 Working Party Guidelines on the implementation of the CJEU ruling in *Google Spain* sets out 13 'criteria' or questions to consider in determining whether the information should be delisted.

The EDPB recently published '***Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines case under the GDPR (Part 1)***':

- Article 29 WP Guidelines on implementation still relevant.
- The right to delisting incorporates the right to object (GDPR Article 21) and the right to erasure (GDPR Article 17).
- A data subject may request delisting under the different grounds in GDPR Article 17.

# Request to Delist: relevant grounds

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A data subject's 'particular situation' must be carefully evaluated. Relevant factors may be (but are not limited to):

- Detriment when applying for jobs
- An impact on personal reputation
- A role in public life
- Related to his or her professional life or private life
- Does the information constitute hate speech, slander, libel or similar offences?
- Factual inaccuracy
- Opinion
- If a criminal offence – seriousness of the offence and when it was committed.

# The grounds for an erasure request

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There are six grounds for erasure, found in Article 17(1)(a) to (f):

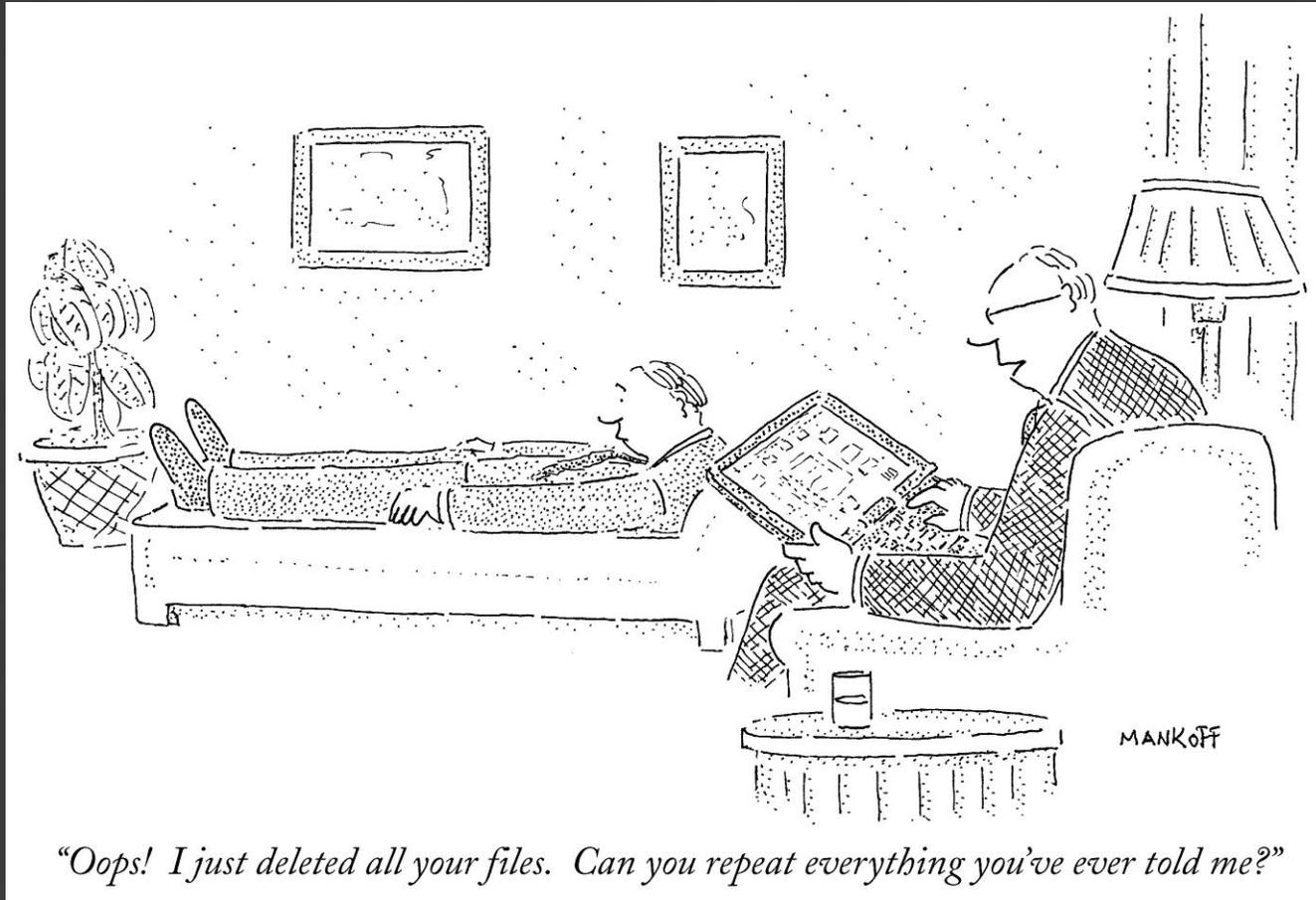
- The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise or processed.
- The data subject withdraws consent.
- The data subject objects to the processing and there are no overriding legitimate grounds for the processing (see GDPR Article 21: right to object).
- The personal data is being unlawfully processed.
- The personal data must be deleted to comply with the law.
- The personal data have been collected in relation to the 'offer of information society services' to a child.

# When can a request be refused?

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- Where a ground in Article 17(1) is not met, or where an exemption in Article 17(3) applies.
- Exemptions in Article 17(3)(a)to(e) where the processing is necessary for:
  - the right to freedom of expression and information.
  - to comply with a legal obligation, or for the performance of a task carried out in the public interest.
  - for reasons of public interest in the area of public health.
  - for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.
  - for the establishment, exercise or defence of legal claims.
- Schedules 2 and 3 DPA 2018.

# Practical Considerations



# Cases

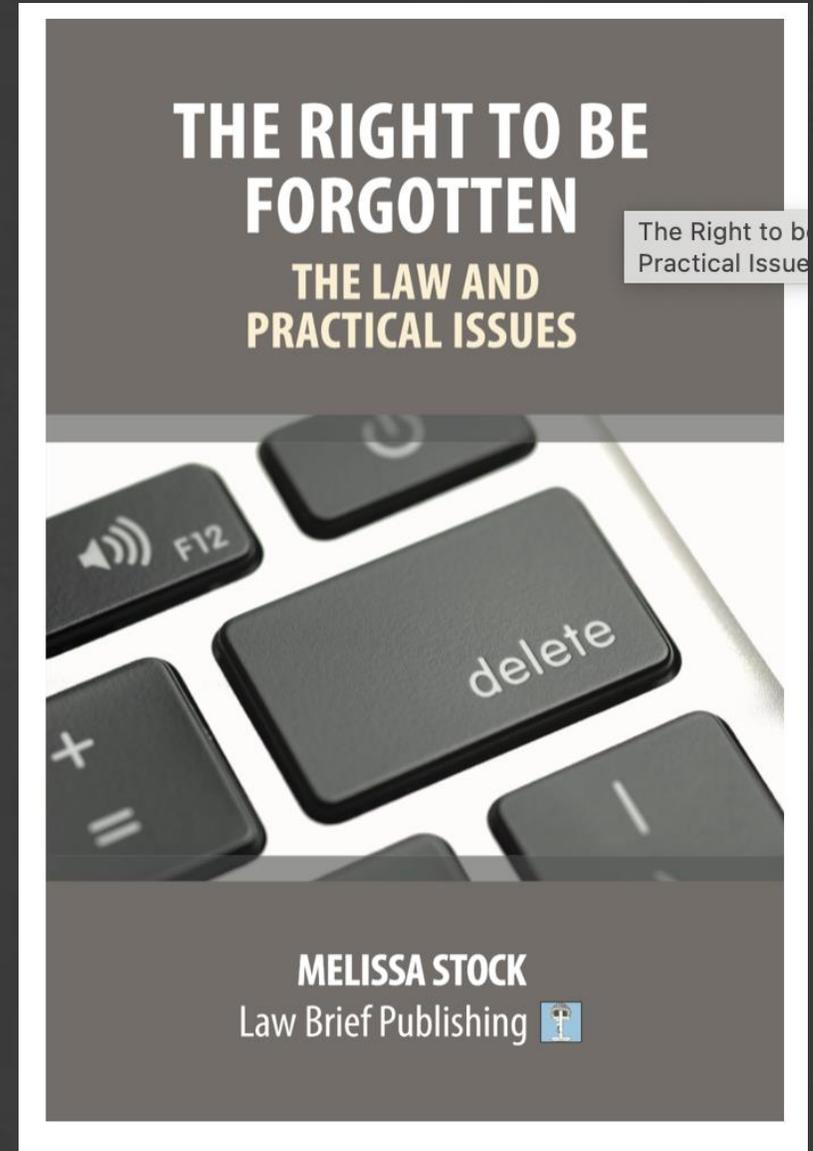
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- In the UK: *NT1 & NT2 v Google LLC (the Information Commissioner intervening)* [2018] EWHC 799 (QB)
- CJEU cases:
  - GC and Others v Commission nationale de l'informatique et des libertes C-136/17*
  - Google LLC v Commission nationale de l'informatique et des libertes C-507/17*
- To be heard by the CJEU soon – referral from Germany's highest court asking the court to determine two questions in relation to delisting:
  - to what extent should the clarification of the truth of information made public by the original publisher be explored?
  - are photos that appear in thumbnails in a search result against a person's name, even if the context of the link between the publisher and the person in the photo is not revealed within the scope of Article 17?

# Q&A

I hope to cover as many questions as possible but if I don't get to you, please feel free to email me: [mstock@privacylawbarrister.com](mailto:mstock@privacylawbarrister.com), or connect with me on LinkedIn.

There is a 20% discount on my book available until the end of April: UQPY6.



# Any Questions?

# Thanks for watching!

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