GDPR Case Study: 2020-03-11, Google LLC, Sweden

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Abstract

The Swedish Data Protection Authority (DPA) imposed a fine of 75 million Swedish kronor (approximately €7 million) on Google LLC for failure to comply with Articles 5, 6 and 17 of the General Data Protection Regulation (GDPR) guidelines [1]. In 2017, the DPA issued a demand that Google delist certain individuals' names from its search engine due to inaccuracy, irrelevance, and superfluous information [2]. Google LLC failed to comply with the order issued by the DPA and thus was fined.

Google appealed the DPA's decision at the Administrative Court of Stockholm, but the court found Google guilty of violating GDPR laws and the appeal was rejected on November 23, 2020 [1].

1 Introduction

The Swedish Data Protection Authority (DPA) was established in 1973 and organized under the Ministry of Justice. It is tasked with protecting Swedish citizens against violation of privacy through processing of personal data. Although the DPA was formed in 1973, its work became more significant and effective after the establishment of the GDPR.

There were two incidents in which Google failed to remove search listings whose removal had been requested by invoking the 'right-to-be-forgotten' (Article 17 in the GDPR). In 2017, the Swedish DPA performed an audit and "concluded that a number of search listings should be removed." Google was ordered to do so. [3]

In 2018, the DPA followed up with another audit and found that Google had still not complied with the previous order. In addition, the DPA evaluated Google's procedure of managing delisting requests and identified some major flaws. For example, before removing a website from the search index Google notifies the site's owner. This creates a loop-hole because the site owner can move data to a different platform and thus violate Article 17 ('right to be forgotten').

2 Background

In this case, the data subjects were Swedish citizens who were users of Google. The data controller (the body that defines what data is needed and determines how the data will be processed) was Google itself, as was the data processor (the body that performs the actual processing of the data). The responsible data protection agency was the DPA (the Swedish Data Protection Agency).

3 GDPR Violation

In Google LLC vs Swedish Data Protection Authority (DPA), the following articles of the GDPR were found to have been violated:

1. **Article 5** concerns principles relating to the processing of personal data. It states that personal data must be collected and maintained in a way that is fair and transparent, and that the purpose of its use must be justifiable and explicit. [4]

2. **Article 6** discusses the lawfulness of processing. It lists the conditions that must be met for the processing of personal data to be deemed lawful. These conditions include obtaining explicit consent from the data subject, compliance with a legal obligation, etc. [4]

3. **Article 17** details the right to erasure (also known as the 'right to be forgotten'). This refers to the data subject's right to have their personal data erased due to a variety of reasons, including but not limited

to withdrawal of consent, unlawful processing, and a change of circumstances that means that maintenance of their data is no longer necessary. [4]

3.1 What happened?

The Swedish DPA found major flaws in Google's process of delisting a website from its search engine. As previosuly stated, Google notifies the site owner that their website will be removed, which is problematic because the site owner can move the website to a different URL (and thus the site will still be shown by another search engine). It is not permitted under the General Data Protection Regulation (GDPR).

In addition, the result of the investigation found that Google did not comply with previously issued audit requests in a timely manner. In particular, there were two search results that should have been removed but were still visible to users. The investigation also concluded that in general, "Google has...made a too narrow interpretation of which web addresses need to be removed from the search result listing" [6].

For technical context, there are millions of websites on the internet, making it impossible to manually sort through them. To maintain an efficient search engine, Google scrapes for public facing URLs and adds them to its index. Search results are ranked based on user queries.

3.2 Who/what is responsible?

Google failed to comply with the audit requests by the Swedish DPA. After receiving several notices and undergoing data inspections, Google did not make the necessary changes in a timely manner which resulted in fines being imposed by the DPA. It is Google's corporate responsibility to comply with the local law and order.

The audit requests made by DPA were not unreasonable, and thus Google should have changed its process on informing the site owners. Protecting the privacy and rights of the users is required by the GDPR. Google appealed against the fines in a higher court, but the court found that, "Google's procedures regarding requests to remove search result hits are contrary to the Data Protection Ordinance" [5]. The case was dismissed and Google was held responsible for its actions.

3.3 What could have prevented this?

In order to have avoided this situation, Google should have heeded the first warning issued to them in 2017 by the DPA. This initial audit ordered Google to remove a number of search listings for which 'right-to-be-forgotten' requests had been invoked (however, Google failed to remove two of them by 2018, at which time the DPA was forced to issue a follow-up audit). [6]

Corporate Social Responsibility (CSR) is a self-evident part of any business. It is Google's responsibility to comply with the Sweden's laws and regulations. Failure to do so can result in serious repercussion. If Google would have worked with the Swedish DPA and implemented the changes requested, this situation could have been avoided.

4 Discussion

This is a significant case because it demonstrates a personal data privacy violation by a major company, the process of back-and-forth communication between the violator (Google) and the enforcing organization (the DPA), and the strength that the GDPR gives organizations like the DPA.

At its core, the obligation to protect users' privacy that the GDPR seeks to uphold is justified. Because of this, it can be tricky to determine if it is better for users to be notified that their webpage has been deleted (thereby accommodating the individual user) or to not be notified (the mandated solution from the GDPR in response to privacy concerns). Ultimately, the GDPR seeks to maintain a status quo of personal data privacy that can be similarly maintained across different platforms, and in this case it was required of Google to change their existing behavior.

While Google should have been responsible and complied with the DPA's initial request in 2017, it is notable that the process of evaluating 'right-to-be-forgotten' requests is neither brief nor generalizable. As stated in Google's Transparency Report, "We assess each request on a case-by-case basis," and "After a request is submitted to us via our webform it undergoes a manual review." [7] Thus while timely search result removals should be a priority (and Google should have complied with these policies, especially when they were under specific scrutiny from the DPA), it is understandable that in general delisting is a lengthy process that can be difficult to accomplish in a limited amount of time.

References

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