

Google LLC Fined after GDPR Infringement in Sweden

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Abstract

The Swedish Data Protection Authority (DPA) has issued a fine against Google LLC on March 2020, for failure to comply with the General Data Protection Regulation (GDPR) after issuing a warning already in 2017 in which Google failed to act upon. The warning was not followed up by Google properly and in August of 2018, the Swedish DPA initiated a follow-up audit that revealed several breaches of the GDPR that had not been addressed, (5, 6, 9, 10 and 17 covered by Article 83) [2]. The DPA found several grounds for imposing a harsh fine on Google as they had not taken appropriate measures to ensure privacy for their users and set it at €7 million. Google appealed the decision, which on June 22, 2020 was shot down by the top administrative court in France [1, 7].

1 Background

In this case study, subjects are Swedish citizens whom have been customers of Google's services. Google is the data controller, controlling what data to process and how it will be used which makes them responsible for the processing and deletion of its users' data. The responsible data protection agency was the Swedish Data Protection Authority, Datainspektionen.

2 GDPR Violation

Datainspektionen has found several breaches of the General Data Protection Regulation by Google, significantly impacting user's privacy rights.

1. Searches with Google on the web was not deleted without 'undue delay', and some searches were not deleted at all violating article 17.1(a) of the GDPR [8].
2. Google has been unlawfully processing special categories of personal data and data relating to criminal convictions of its users. Violating Article 9.1 and 10 of GDPR [8].

3. Google had done a too narrow interpretation of what and how web addresses should be removed from the search result listing, misleading the users about what happens to their data, violating Articles 5.1(a, b) and 6.1(b, c, d) of the GDPR [2, 8].

2.1 What happened?

The GDPR states that every user has a 'right to be forgotten', and can exercise this right whenever they want. According to the DPA, Google's system of notifying website owners is unlawful. When Google approves a delisting request, it informs the website operator which web page is impacted and who the user behind the request is. If a web-page owner knows that a URL will no longer show up in Google's search results, they can simply republish it with a new URL to make it visible. This is the exercise the DPA has ordered Google to cease and desist. They claim that, in practice, it puts the right to delist out of effect, as it will discourage users from exercising their rights, undermining its effectiveness [10].

The violations has resulted in a lost opportunity for individuals to exercise their rights, and is estimated to have affected over 5,690 persons in Sweden alone [6]. The users have attempted to delete their search history, which unknowingly notified site-owners, exploiting the users without legitimate purpose. This number is likely bigger given that Google is an international tech company, with clients all over the world.

The regulator found that Google's practice of notifying website owners was faulty. Google does not have a legal basis for informing site-owners when search result listings are removed and gives individuals misleading information by the statement in the request form. Furthermore, Google suggested it was not obliged to remove the processing and collection of special categories of personal data and data relating to criminal convictions, as it was not part of the person's request. However, the DPA did not agree [3].

2.2 Who/what is responsible?

Google LLC are fully responsible for what happened, as they are the controller managing the data of its users. They were warned by the Swedish DPA and given time to act upon these breaches of privacy. Google has appealed the decision stating that they disagree with the decision on principle, without further comment or explanation regarding the case. Since Google was given a warning, and did not respond by contradicting the case or changing their practices, they are responsible for the claims that they have against them.

2.3 What could have prevented this?

There are several things that could have prevented this, but first and foremost it would be more rapid and appropriate action from Google. If Google had taken action in 2017 when they were warned, the amount of people affected would be drastically lower, and the fine would have been more moderate. Because this has been going on for years, it has affected more users than necessary, and they face a harsher penalty.

Another thing that could have prevented this would be more prominent and strict regulations for these tech companies everywhere. This would force them to comply with regulations more drastically due to a higher risk as more users would be exposed to flaws in privacy protection.

3 Discussion

3.1 Was the fine imposed appropriate?

While the fine is high, it is a small amount for Google. The fine could, and should, have been even higher. There are not many similar cases, but by looking at other GDPR cases in other countries, such as in France, Google was fined €50 Million [5, 9]. In Sweden, the DPA argued that the fine could be up to 4 % of Google's total global annual sale. Alphabet's global annual sales, (Google's parent company) was in 2018 approximately 136,819,000,000 US dollars, which is equivalent to approximately 119,500,000,000 euros. 4 % would be approx. €4.78bn. However, Sweden is much smaller than France and given the difference in population size and number of affected people, the lower fine is justified.

3.2 Are similar violations a commonplace?

Violations similar to the one Google has been charged for has not been common, however there seems to be a commonplace for other breaches by tech companies such as collecting user's data without a "free" opt-out. There is one case so far, in Belgium which is based on the same principle as this case, the 'right to be forgotten' [4]. In this case Google was fined €600,000, however the infringements found were less serious than that of Sweden's.

The reason why this particular case has not been a commonplace can be because there are more and larger breaches of GDPR to focus on as of right now, and since the GDPR is relatively new law, it may just have been de-prioritised so far. However, it is likely to become more and more common once there will be more resources for combating these issues.

4 Conclusion

This case was the first of its type, but there are many more to come. The GDPR has led to a higher pressure on tech companies to protect their users and their privacy, regulating the data and increasing the transparency of how they use and process the data. They still have a long way to go when it comes to informing users of their policies as well as adapting their practices to comply with the GDPR. There are many GDPR breaches concerning other tech companies, and they are rightfully in the spotlight because they are the biggest actors, most likely to expose users and raise privacy concern. This case is a step in the right direction for users of the web, and hopefully it will continue in this direction with more countries adapting the GDPR or similar frameworks to their laws.

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