

# The Washington Post

## Google News to move “out of Spain”

By [David Post](#)

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Earlier this year, Spain passed [a rather egregious amendment to its copyright law](#) (to take effect in the New Year), purportedly as some kind of anti-piracy move, but more aptly called the “Google tax” by some observers. The law gives Internet publishers a right to compensation for the use of “snippets” of their content by news aggregator sites (like Google News). And not just a right to compensation: an *inalienable* right to compensation, one that publishers cannot waive or bargain away (in return, say, for being included in the new aggregator listings).

It does seem to be part of [a larger “anti-linking” trend taking hold in Europe](#) – of a piece with the EU’s very troubling new “Right to be Forgotten,” which gives individuals the right to have the links to information about themselves deleted from search engine listings in certain circumstances. [see [here](#), [here](#), and [here](#)]. I’m not sure how much of this is anti-Google (and anti- the many other US-based companies that have managed to become very large and very powerful because of their mastery of the online environment) and how much is just anti-Internet – but it’s a very unfortunate development.

So in response [Google announced yesterday that it is pulling Google News out of Spain](#).

This is, in a way, precisely the way things are supposed to work in this patchwork international legal system that we have. Spain (or Belarus, or Brazil, or the US) has its own legal regime, based (hopefully) on reasoned deliberation among its citizens based on its own set of values and its own history, and if you don’t like it, don’t come there to do business. If Google doesn’t like Spanish law, it can just stay out of Spain. Nothing unusual about that – its the kind of decision that every company operating outside of its own national borders has to make, all the time.

But the Internet, of course, makes things a little more complicated than that. How does Google pull out of Spain, anyway? What they’ve said is that they will, starting on December 16, be “remov[ing] Spanish publishers from Google News, and clos[ing] Google News in Spain.” Google News will still be available in Spain – nothing will appear at the [“news.google.es”](#) address, but a Spanish Internet user will still be able to do exactly the same thing I am able to do, which is to type “news.google.com” into his/her browser, and to have the Google News site displayed there. That site will not, however, have links to publications from Spain. [Exactly how Google is going to figure out which sites are “in Spain” and which are not is an interesting question - I suspect they have very (though not 100%) effective ways of “geolocating” sites whose servers are located within Spanish borders].

Several things may happen next. The Spanish people may howl in outrage at their foolish and misguided legislators and get the law changed. Not at all inconceivable; that, too, is how the system is supposed to work, and my guess (though I know not the slightest thing about Spanish politics) is that Spanish publishers, large and small, are going to be extremely unhappy that they are no longer accessible via any Google News site worldwide.

But assuming that doesn't happen, or in the meantime, Google's pullout does not, necessarily, mean that it will avoid liability in Spain. One can easily imagine a scenario under which a Spanish court could say: Google is still doing business "in Spain," because news.google.com (not to mention all the other Google sites and services) are still accessible to Internet users in Spain. And what about those Spanish publishers that don't get identified as such by Google's filters – if their snippets show up on news.google.com, won't they have a remedy in Spanish court? And I'm no expert on the content of Spanish law, but many copyright laws around the world (including, notably, our own) protect *works*, not people – a work written by a Frenchman and published in Japan gets precisely the same protection under US law as something I write and publish in Washington DC. If Spanish law works that way, then news.google.com is still infringing even after it removes "Spanish" publications, and it is doing so "in Spain" (because its sites can be accessed there). [If this sounds far-fetched, it's not - this is precisely the kind of "extraterritorial application" of law that [the EU, in its official guidelines, has endorsed in regard to the "right to be forgotten."](#)]

That's *not* how the international legal system should work, and it will do considerable damage to the free flow of information on the Net if it picks up steam. "Extraterritorial application of law" in this way contravenes very fundamental principles of consensual governance; Google (or anyone else) has to have a way to stay out of Spain and avoid compliance with Spanish, if they don't like Spanish law. On the Internet, its application has the potential to kill the goose laying all those golden eggs, and needs to be resisted at all costs. [And if we are going to apply that fairly, it has to apply in all directions; to oppose Spain's extraterritorial application of its law implies and should imply that we oppose the US's extraterritorial application of its law, on the Internet - but that's the subject for another day].

*David Post taught intellectual property and Internet law at Georgetown Law Center and Temple University Law School until his recent retirement. He is the author of "In Search of Jeffersons Moose: Notes on the State of Cyberspace" (Oxford, 2009), a Fellow at the Center for Democracy and Technology, and an Adjunct Scholar at the Cato Institute.*