

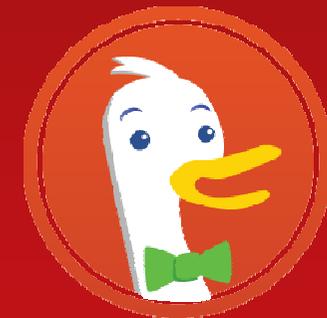
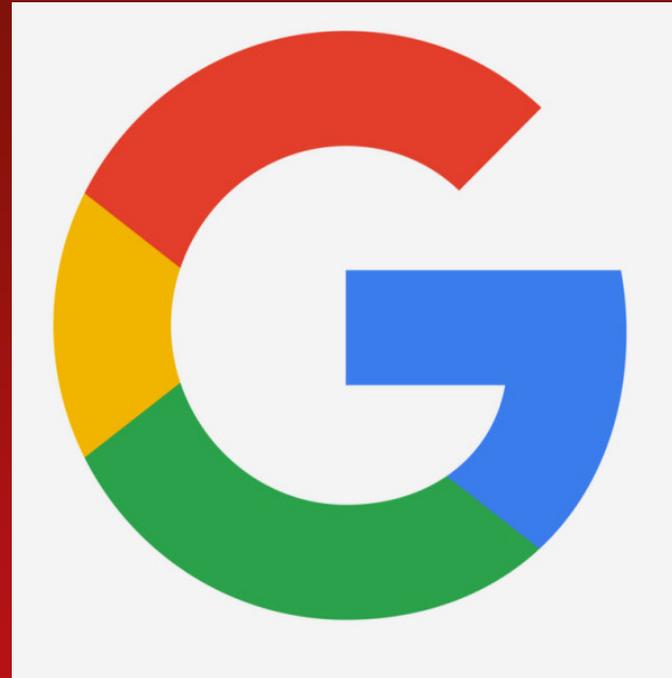
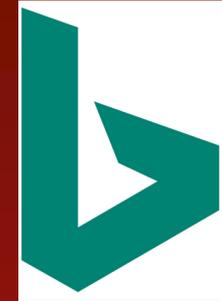


Liability of internet service providers Search Engines

Dublin, 31 March 2017

Axel Munier

Search Engine(s) ?



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Concerns of search engines :

- Their own obligations and liability
- Their customers (advertisers)' rights and liability
- Their users: want a safe, transparent environment
 - where search results are clearly differentiated
 - where illegal/offensive content reported is removed swiftly

→ Liability v. Responsibility : strike the right balance

The Law : Liability of service providers

- Directive 2000/31/EC, Article 14
- ‘Information society service’ = storage of information provided by user of service
- SP not liable if no actual knowledge of illegal activity
- On notice of illicit content, SP must act expeditiously to remove/disable the content

The *Google Adwords* ruling: search engines

- ECJ, 23 March 2010, C-236/08 to C-238/08
- Referencing service = an ‘information society service’
- Eligible to liability exemption if it plays a neutral role:
 - A merely technical, automatic and passive role, without knowledge or control of the content = not an ‘active role’
 - Regardless of payment received in consideration for service
 - Regardless of provision of general information to clients



Applications of the ECJ ruling

- ‘Natural’ results: search engine exempted from liability in almost all cases
 - ‘Sponsored’ results : search engine generally exempted from liability, unless it has participated in the drafting of the commercial message (rare)
- ➔ Search engines are not the right ‘target’

The *Google Adwords* ruling: advertisers

- ECJ: advertiser infringes trademark if the ad does not enable users to ascertain origin of the goods
- Case-by-case analysis
- Deviating decisions of the member states courts
 - UK: *Interflora* case – Marks & Spencer liable for infringement
 - FR: user is fairly unskilled → advantage for TM owners
 - GER: user is able to distinguish commercial vs. other results

Responsibility : obligations ?

- No general obligation to monitor contents (Art. 15) :
obligation to remove contents expeditiously on notice
- No 'notice and stay down' obligation ?
- Filtering ordered by Court or administrative body
- Practical solution: marking of videos ?
- Obligation to report offensive material: the French law

Orientations given by EU Commission

- Issues highlighted in the DSM Strategy paper:
 - Removal of illegal content can be too slow in certain cases
 - Content is sometimes taken down erroneously
- ➔ 52 % of stakeholders say that action is ineffective
- Measures needed according to the Commission:
 - Stricter rules for removal of illicit content ?
 - Impose 'greater responsibility' on search engines: a duty of care ?

Thank you

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