

# Swiss Court Rejects FIFA's Bid to Remove Offensive Google Search Results

A recent decision by the Zurich Commercial Court has clarified the conditions under which search engines can be ordered to delist certain search results that allegedly violate personality rights.

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## Facts

The Fédération Internationale de Football Association (**FIFA**) sued Google Ireland Ltd and Google LLC (collectively, **Google**) in the Zurich Commercial Court for violation of personality rights. The dispute centers around a website operated by a third party that publishes content highly critical of FIFA. The articles accuse FIFA and certain individuals affiliated with the organization of criminal conduct, particularly bribery. FIFA considers this content offensive and claims it infringes upon its personality rights.

FIFA argued that Google's indexing and linking to such content exponentially increase its dissemination, thereby contributing to the infringement of its rights. It requested that Google delist seven specific articles from its search results, effectively making them unsearchable through Google.

## No Specific Swiss Law on Liability of Internet Service Providers

Unlike the European Union, which has regulations such as the Digital Services Act, Switzerland does not have "safe harbor" provisions favoring internet service providers. While the Swiss Supreme Court has addressed similar issues—such as the liability (or lack thereof) of internet access providers for copyright infringement and the liability of hosting providers for personality rights violations via third-party blog posts—there is no existing Supreme Court jurisprudence on

the liability of search engines for linking to illicit content created by others.

The relevant statutory provision in Swiss law is somewhat ambiguous, stating that anyone "contributing to" a violation of personality rights can be held liable. The key question before the court was whether Google's specific actions in helping to disseminate offensive content created by others amounted to contributory liability.

## Everything Depends on the Search Prompt

After reviewing the evidence presented by both parties, the court answered this question in the negative and rejected FIFA's request to have the articles delisted from Google's search results. A decisive factor was that FIFA could not demonstrate that a simple search for "FIFA" would lead users to any of the offensive content. The material in question could only be found if the search terms combined "FIFA" with the names of specific individuals and/or certain words from the article titles, such as "FIFA [redacted name] indictment" or "FIFA [redacted name] bribery". The court concluded that under these circumstances, it is not Google that establishes a link between FIFA and the offensive articles but rather the user entering the search terms. Therefore, the court found no causal link between Google's actions and the alleged violation of personality rights, and Google could not be considered as contributing to the violation.

## Comment

Firstly, it is important to note that the decision by the Commercial Court can still be appealed to the Swiss Supreme Court. Therefore, this ruling may not be the final word on the liability of search engines in Switzerland concerning personality rights violations.

The decision provides a welcome, albeit limited, clarification on the liability of search engines regarding the violation of personality rights. It underscores the significance of user agency in accessing specific content through tailored search queries. By focusing on the specificity of the search prompts required to find the offensive material, the court effectively distinguished between passive indexing by the search engine and active seeking by the user.

This ruling has several implications:

- **Limitation of Liability for Search Engines:** The court's decision suggests that search engines may not be held liable for merely indexing content that is accessible only through specific, targeted search queries. This could provide some reassurance to search engine operators in Switzerland, as it limits their responsibility in cases where they are not actively promoting or highlighting offensive or illegal content.
- **Legal Uncertainties Remain:** Despite this clarification, the absence of specific legislation or comprehensive jurisprudence on the liability of internet service providers in Switzerland means that uncertainties persist. Companies operating in this domain should continue to exercise caution and monitor legal developments closely.
- **Potential Legislative Developments:** The decision may prompt discussions about the need for clearer regulations in Switzerland, similar to the European Union's Digital Services Act.

In conclusion, while the court's decision provides some guidance, it also highlights the complexities inherent in assigning liability in the digital age. Search engines play an essential role in the dissemination of and access to content, and legal frameworks are still catching up with



technological advancements. Stakeholders should stay informed about legal trends and consider proactive measures to address potential risks related to personality rights and content liability.

Please do not hesitate to contact us if you have any further questions on this subject.

**Legal Note:** The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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