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### French tribunal invalidates many terms in Google+ T&Cs

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# Recent developments in European Consumer Law

THURSDAY, 14 FEBRUARY 2019

## French tribunal invalidates many terms in Google+ T&Cs

On Tuesday, the Tribunal de Grande Instance of Paris decided on a claim presented by the French consumer association *Que choisir* against Google and challenging the company's practices and contract terms involved in the (recently discontinued) Google+ service.

The association challenged Google's Terms of Service and Privacy policy in their entirety, but also a large number of individual clauses contained therein.

The Court analysed these terms in light of consumer legislation, and in particular unfair terms provisions in the *Code de la consommation*, and data protection rules. They also, possibly quite crucially, relied on a number of provisions in the same Code which dictate the information which consumers must receive prior to contract conclusion.

Different types of terms were, in this context, considered as invalid:

1) Terms which described the purpose of data collection in a way that did not allow the consumer to really understand what their information was going to be used for

*In particular, the Court condemned certain terms for presenting data collection as (exclusively) aimed at providing better services, rather than making the consumer aware of the commercial value and utilisation of the information collected (see clause 4 privacy policy, p. 88 of the decision).*

2) Terms concerning geo-localisation

*In this case, the main challenge is that the geo-localisation information is in no direct connection to the service and takes place through connecting to information stored by different services. Consumers should, the decision implies, have the chance to accept or reject this separately. See Clause 9 Privacy Policy, p. 93.*

3) Terms allowing the provider to change the data concerning certain users, and to keep a log of old data that a user has sought to rectify

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*This is against data protection principles, which put individuals in control of their personal data after it has been collected. See clause 14 and 17 Privacy policy, p 98-100.*

4) Terms requiring users to accept that their information may be stored outside of the EU/EEA, without safeguards

*Such terms are not so much unfair as they are plainly in contrast with mandatory rules restricting the transmission of data outside of the EEA, except when provided for by "safe harbour" agreements. See Clause 19 Privacy Policy, p. 102.*

5) Terms allowing the provider to change their conditions, or to terminate the provision, without indication on which grounds such measures could be taken

6) One of the terms in the Terms of Use was declared invalid for its attempt at waiving all sort of liabilities without any clear delimitation of the waiver's reach

7) Another term, concerning cookies, alerted consumers that "not all services" could reasonably work without them, but did not give any indication as to what the specific impact of refusing cookie collection could be

The Court considered both the Terms of Use and the Privacy Policy as parts of one global contractual agreement. Contrary to the association's submissions, it considered that in itself, the presentation of the two documents was sufficient to provide users information concerning the nature and scope of what consumers agree to: in particular, the use of hyperlinks and "fragmentation" of relevant information is suitable to avoid an excessive concentration of information in a single text in limited space, the lexicon is sufficiently informal and it includes a glossary, and the personal nature of the information processed is sufficiently highlighted.

In particular to the extent that, such as for geo-localisation, the Court seems to indicate separate approval - i.e., approval that is not obligatory in order to get access to the service - *Que choisir* has commented that the decision marks an end to "*les conditions générales interminables à accepter en bloc*". In some cases, where the terms contested were plainly against data protection legislation, the decision should also mean that the terms should no more be employed.

On the other hand, in so far as transparency was the reason for invalidating many of the controversial clauses, it will remain to be seen what the practical consequences of the decision - which, is, furthermore, still subject to appeal - will be. Interesting times!

(A PDF copy of the decision, in French, is available on *Que Choisir's* website as linked above)

Posted by [Candida Leone](#) at 14:10     

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