Resolved: The “right to be forgotten” from internet searches ought to be a civil right.

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# Author: Jason Jordan

# Editor: Kyle Cheesewright\*\*\*Topic Analysis\*\*\*

**Resolved: The “right to be forgotten” from internet searches ought to be a civil right.**

 This topic asks debaters to analyze a timely question of the balancing of different sorts of individual freedoms and rights in an open society. This topic is especially important given the proliferation of personal data across social media platforms over the last decade. The term ‘right to be forgotten’ is taken from European legal rulings that have established the right as a basic human right across the European Union. In this context, the right to be forgotten allows individuals to request that personal information about them be removed from the search results that will be displayed whenever a third party searches their name. Thus, when granted this right, individuals have some ability to remove pictures, social media posts, and news stories from easy internet accessibility. The particular provisions of the EU right to be forgotten, as well as the court cases that led to its codification can be found in the further readings section of this file.

 Affirmative debaters on this topic will be able to access ground several ways. First, many civil libertarians as well as consumer advocates argue for a right to be forgotten from the standpoint of individual ownership of the self. Second, aff debaters will be able to access links to international human rights law, since several international groups as well as the EU have advocated for a right to be forgotten. Additionally, affirmative cases will be able to isolate some very real “harms” of data proliferation that takes place without such a right.

 Negative debaters on this topic will be able to debate from two solid areas of argumentative ground. First, the European right to be forgotten has already evidenced many issues related to implementation including questions of legal jurisdiction, enforcement mechanisms, and loopholes. Second, many legal scholars and political pundits have weighed in on the right to be forgotten as a means of engaging in censorship generally, and undermining the freedom of the press.

 Additionally, there is some debate to be had on both sides of this topic stemming from the specification of “civil right.” However, some confusion may occur since civil rights are typically discussed in the context of the United States, and most of the discussion of a right to be forgotten tends to focus on a European context.

 Finally, interesting critical ground exists across this topic. Many Marxist thinkers have criticized the fetishization of privacy as stemming from bourgeoisie ideals of personal property and ownership. Along these same lines, debaters interested in critiquing regimes of statism will find ample resources criticizing legal rights. Finally, the question of the degree to which technology intermingles with personhood and sociality at the heart of this topic opens up linkages to a wide variety of critical thinkers.

# \*\*\*Further Reading\*\*\*

http://www.stanfordlawreview.org/online/privacy-paradox

http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet\_data\_protection\_en.pdf

http://eutopialaw.com/2014/05/16/case-comment-google-spain-sl-google-inc-v-agencia-espanola-de-proteccion-de-datos-mario-costeja-gonzalez/

http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf

http://www.infotechnology.com/internet/La-Justicia-argentina-sobreseyo-a-Adriana-Norea-presidente-de-Google.hmtl-20120604-0005.html

https://casetext.com/case/melvin-v-reid#.U9Wjjyh2FSU

# \*\*\*AC\*\*\*

**I affirm:**

**Resolved: The “right to be forgotten” from internet searches ought to be a civil right.**

**Because this resolution questions the balancing of individuals rights in a free society, the value for this debate should be Individual rights**

**Petro explains:**

Petro, Wake Forest Professor in Toledo Law Review, 1974 (Sylvester, Spring, page 480)

However, one may still insist, echoing Ernest Hemingway - "I believe in only one thing: liberty." And it is always well to bear in mind David Hume's observation: "**It is seldom that liberty of any kind is lost all at once**." Thus, **it is unacceptable to say that the invasion of one aspect of freedom is of no import because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, and the end of all human aspiration**. Ask Solzhenitsyn. Ask Milovan Dijas. In sum, if one believed in freedom as a supreme value and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then **every invasion of freedom must be emphatically identified and resisted with undying spirit**.

**And, the standard we should use in this debate to measure individual rights is Protecting individual privacy.**

**According to McFarland:**

“Why we care about privacy” By Michael McFarland SJD, 2012, online at Santa Clara law school: http://www.scu.edu/ethics/practicing/focusareas/technology/internet/privacy/why-care-about-privacy.html

Privacy is important for a number of reasons. Some have to do with the consequences of not having privacy. People can be harmed or debilitated if there is no restriction on the public's access to and use of personal information. Other reasons are more fundamental, touching the essence of human personhood. Reverence for the human person as an end in itself and as an autonomous being requires respect for personal privacy. To lose control of one's personal information is in some measure to lose control of one's life and one's dignity. Therefore, even if privacy is not in itself a fundamental right, it is necessary to protect other fundamental rights.

**Contention 1: The right to be forgotten is a basic right**

Grossman 14

“You have the right to be forgotten” by Lev Grossman, a journalist, in Time. May 15, 2014. Online at: http://time.com/100553/you-have-the-right-to-be-forgotten/

On March 5, 2010, a lawyer named Mario Costeja González lodged a complaint with the Spanish Data Protection Agency against a newspaper called La Vanguardia. Twelve years earlier, González’s house had been auctioned off to pay his social security debts, and La Vanguardia ran a brief article about it. The article was factually accurate, but González felt it was no longer relevant to his life. He wasn’t happy that it came up when you Googled him either, so he added Google to the complaint for good measure.

The Spanish Data Protection Agency dismissed the complaint against La Vanguardia but–astoundingly–it supported the complaint against Google and asked it to remove the article from its search results. An understandably incredulous Google took the issue to Spain’s National High Court, which turned for advice to the highest legal authority in the European Union, the Court of Justice in Luxembourg. On May 13, contrary to the expectations of Google and virtually everybody else except maybe González, the Court of Justice affirmed the original decision, concluding that a person should be able to demand that a search engine remove links “on the ground that that information may be prejudicial to him or that he wishes it to be ‘forgotten’ after a certain time.” In doing so, the court endorsed a relatively new addition to the catalog of human rights: it’s being called the right to be forgotten.

Make no mistake, this is a watershed moment in human history: mankind, after spending untold millennia looking for ways to be remembered by posterity, must now beg to be forgotten instead. It puts one in mind of the Cumaean Sibyl, who, after being granted a lifespan of a thousand years by Apollo, longed only to die. To the list of things that our ancestors would have found utterly unintelligible about the way we live now we can add, right next to the epidemic of obesity, its informational equivalent: an epidemic of memory**Contention 2: The right to be forgotten is key to protecting privacy**

Posner 14

“We all have the right to be forgotten” in Slate online. By Eric Posner. Eric Posner, a professor at the University of Chicago Law School, is a co-author of [The Executive Unbound: After the Madisonian Republic](http://www.amazon.com/gp/product/0199765332/ref%3Das_li_ss_tl?ie=UTF8&tag=slatmaga-20&linkCode=as2&camp=1789&creative=390957&creativeASIN=0199765332) and [Climate Change Justice](http://www.amazon.com/gp/product/0691137757/ref%3Das_li_ss_tl?ie=UTF8&tag=slatmaga-20&linkCode=as2&camp=1789&creative=390957&creativeASIN=0691137757). May 14, 2014. Online at: http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2014/05/the\_european\_right\_to\_be\_forgotten\_is\_just\_what\_the\_internet\_needs.html

The European “right to be forgotten” is the most important right you’ve never heard of. It’s not a right to be purged from the memory of people who know you, but rather to control how information about you appears online. On Tuesday, the European Court of Justice explained what this means. The court held that Google violated a Spanish lawyer’s right to be forgotten by refusing to eliminate links to embarrassing articles about him in its search results. The outcome was decried by press freedom advocates everywhere. In fact, it’s perfectly sensible. And it shows that, contrary to stereotype, America is rigidly ideological about free speech, while Europe is pragmatic and flexible.

Back in 1998, the Spanish newspaper La Vanguardia published two notices about an auction of the property of a Spanish lawyer named Mario Costeja, held to pay off his debts. More than a decade later, anyone who Googled Costeja would see, in the search results, links to those notices on the newspaper’s website. Costeja asked the [Spanish Data Protection Agency](http://www.agpd.es/portalwebAGPD/canaldocumentacion/publicaciones/common/pdfs/AEPD_en.pdf), which oversees the dissemination of personal data, to order La Vanguardia to take the notices down and to order Google to remove links to the pages from the search results for Costeja. The agency refused the first request because the newspaper had published the notices by court order. But it granted the second, telling Google to remove the links.

This is the ruling that Europe’s highest court, the European Court of Justice, [approved](http://curia.europa.eu/juris/document/document.jsf?docid=152065&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=341631) this week.

Much of the case turns on technical issues, such as whether a search engine is a “processor” of personal data under the law (it is). The bottom line, however, is that Google must remove links to Web pages that contain personal information unless the public’s interest in access to the information in question outweighs the privacy interests of the person who is affected.

This balancing test is vague, but it is hugely more protective of privacy interests than American law, which nearly always prevents people from winning anything from search engines and publishers who have spread personal information about them far and wide. The European ruling likely gives more protection to people who are not public figures, like Costeja, and from the publicizing of events that are long past. **Contention 3: Incorporation of the right to be forgotten spills over and solves**

Hendel 12

Why Journalists Shouldn't Fear Europe's 'Right to be Forgotten' By John Hendel a journalist; JAN 25 2012: Available online at: http://www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldnt-fear-europes-right-to-be-forgotten/251955/

The people who should worry are companies whose profits rely on mined, invasive data abuses. American companies, from Google to Facebook to Amazon, will have to adjust to a user-friendlier European Internet, which at least now will offer one set of rules rather than 27. This overhaul, the first in 17 years, will hopefully reduce the number of conflicted transatlantic court cases we saw in the last half decade. What matters now, more than ever, is the consent of the individual. Google has already made real gestures this year to spread the idea that the company values privacy. The search engine alerts people of a policy change coming March 12 -- "not the usual yada yada," Google assures -- and celebrates the "[five guiding principles](file:///goodtoknow/data-on-google)" of privacy in a video (these principles explain how Google uses our information to "make our products even more useful"). Google features a British narrator in this new video who assures us: "We don't sell user information to other companies." Reding's closing note at the end of her recent Munich speech recognized the delicate ideological balancing act the European Union now embarks on. For now, at least, the right to be forgotten demands corporate transparency with data rather than empowers the individual to censor. Europe will benefit from a unified set of regulations staked against business interests located in America and operating on U.S. ideological principles.  "According to the Fundamental Rights Charter, the freedom of expression and the freedom of information are basic rights for the European citizens. They are directly linked to a free Internet which has thus to be preserved," Reding said. "But those are not the only freedoms. The right of the creator to the content and fruits of his creation are equally important. This right also has to be preserved."

**Contention 4: No other action can solve the right to be forgotten**

Best 14

June 5 2014; The right to be forgotten: Can we really trust Google to decide when our data should die? In ZDnet, by journalist Jo Best. Online at: http://www.zdnet.com/the-right-to-be-forgotten-can-we-really-trust-google-to-decide-when-our-data-should-die-7000030218/

There's a strong case for saying those decisions should be taken out of Google's hands altogether.

For Google, adjudicating on such matters is the regulatory equivalent of asking a teenager to tidy their room — a task they do with no enthusiasm and to the minimum standard possible to keep the higher authorities off their back.  It raises the possibility that far more of these requests will be granted than should be just to speed up clearing the backlog and saving the time and money spent on appeals. Doubtless, soon Microsoft, Yahoo and others will gradually receive the same sort of requests as Google is now doing. Like Google, it will be free to choose to remove or keep links as it sees fit. Such a situation could potentially result in a patchwork quilt of the same request being accepted and rejected by different search providers, for example, with an individual forgotten by Bing and remembered by Google. Rather than have the search providers decide, each as they see fit, on the cases, it would seem wise to have an independent body do it for them — an adjunct to the local data protection authorities who can rule on an individual's request, disseminate the verdict to the affected search providers, and handle any appeals directly. It must also be financed by the industry itself — search companies should bear the brunt of policing themselves, as they do with copyright takedown requests. Copyright vs the right to be forgotten EU commissioner Vivianne Reding told the BBC that Google will get thousands of 'right to be forgotten' requests but millions of copyright takedown demands. "This is a small thing as compared to the copyright things. It is possible to handle the copyright question, so it should also be possible to handle the takedown requests on personal data questions," [she said](http://www.theguardian.com/technology/2014/jun/04/eu-commissioner-right-to-be-forgotten-enforce-copyright-google). Reding is half right — the volumes are small — but there is a large difference between the two. Ownership of copyright is rarely disputed, and those making takedown requests are often large TV companies or record labels with the lawyers and advertising heft to make Google sit up and take notice. The law is fairly clear on copyright, but it's still muddy on the right to be forgotten — for a start, there is no absolute right for a search engine to forget you, just to consider your request. Most of those requests will come from those who lack the monetary might and legal representation to present a challenge to Google, or from those with both seeking to hide information that should remain in the public domain. For the sake of those who want to be forgotten and those who believe certain information shouldn't be hidden, these requests should be taken seriously, considered properly, and granted sparingly. The only way to do that is to take the decisions out of Google's hands.

# \*\*\*Aff Cards\*\*\*

## **RTBF K2 PRIVACY**

Hendel 12

Why Journalists Shouldn't Fear Europe's 'Right to be Forgotten' By John Hendel a journalist; JAN 25 2012: Available online at: http://www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldnt-fear-europes-right-to-be-forgotten/251955/

Today the European Commission released its official data protection rules, which will go into effect in all 27 countries of the European Union during 2014 pending European Parliament approval. Among the many new directives is an enshrined version of Europe's controversial "right to be forgotten." I first wrote about our transatlantic divide over privacy and the nature of this proposed right [nearly a year ago](http://www.theatlantic.com/technology/archive/2011/02/in-europe-a-right-to-be-forgotten-trumps-the-memory-of-the-internet/70643/), back when the European Union announced its intentions to "clarify" what the right meant. It seemed as if the EU was saying that any individual could ask Google to take down links to unflattering stories.

Surely all people suffer from some unknown horror embarrassing them online, from an old photo or comment, up to a Gawker post. The Internet owns us. Our social networks, our blog comments, our quotes in newspapers, our Yelp ratings, Amazon reviews, e-mails, all our personal data, from our birthday to our home state, the Internet knows. But should it always? Or do we Internet users bear an innate "a right to be forgotten" online? It's natural for people to want to control their online reputations. Unfortunately, the right to be forgotten, in its initial conception, would have granted that power in broadly dangerous ways. Now, the right to be forgotten is about to become reality, but don't worry just yet. The right itself has evolved since its inception -- and in the best ways possible.

"Another important way to give people control over their data: the right to be forgotten," declared Viviane Reding, vice president of the European Commission and EU justice commissioner, at the Digital Life Design conference in Munich on Jan. 22. "I want to explicitly clarify that people shall have the right -- and not only the 'possibility' -- to withdraw their consent to the processing of the personal data they have given out themselves. The Internet has an almost unlimited search and memory capacity. So even tiny scraps of personal information can have a huge impact, even years after they were shared or made public. The right to be forgotten will build on already existing rules to better cope with privacy risks online."

## Solvency spills over

Best 14

June 5 2014; The right to be forgotten: Can we really trust Google to decide when our data should die? In ZDnet, by journalist Jo Best. Online at: http://www.zdnet.com/the-right-to-be-forgotten-can-we-really-trust-google-to-decide-when-our-data-should-die-7000030218/

According to the [latest figures](http://online.wsj.com/articles/right-to-be-forgotten-requests-still-rolling-into-google-1401801079), 41,000 Europeans have asked Google stops providing links to 'outdated information' about them. The ability to make such a request is the result of [a European Court of Justice (ECJ) ruling,](http://www.zdnet.com/google-loses-right-to-be-forgotten-fight-in-europes-top-court-7000029383/) handed down last month, in the case of a Spanish national [who filed a complaint](http://www.zdnet.com/spain-sends-right-to-be-forgotten-google-case-to-ecj-4010025551/) regarding search results provided by Google to information about him. Searches for the man's name made through the search engine returned links to two newspaper stories that contained details about a real-estate auction that was held to settle social security debts. In his view, the links highlighted details about his history that were no longer relevant.The ECJ found in his favour, and Google must no longer provide links to the stories when its users search for the man's name (though presumably they can still return the same links for other search terms relating to the stories in question).  But the decision does not just affect the single Spanish complainant — as a result of the ruling, Google must offer all Europeans a chance to exercise their 'right to be forgotten'. It began allowing them to do so [last week by opening an online form](http://www.zdnet.com/want-to-be-forgotten-by-google-heres-how-you-do-it-7000030040/) where individuals can request outdated links about them are no longer returned when others search for their names. Tens of thousands of people filed such requests in a matter of days.

## RTBF= Legal

Travis and Arthur 14

EU court backs 'right to be forgotten': Google must amend results on request Individuals have right to control their data and can ask search engines to remove results, says European court; in “The Guardian”. By [Alan Travis](http://www.theguardian.com/profile/alantravis) and [Charles Arthur](http://www.theguardian.com/profile/charlesarthur) [The Guardian](http://www.guardian.co.uk/theguardian), Tuesday 13 May 2014. Online at: http://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results

The top European court has backed the ["right to be forgotten"](http://www.theguardian.com/technology/series/internet-privacy-the-right-to-be-forgotten) and said Google must delete "inadequate, irrelevant or no longer relevant" data from its results when a member of the public requests it. The test case [privacy](http://www.theguardian.com/world/privacy) ruling by the [European Union](http://www.theguardian.com/world/eu)'s court of justice against Google Spain was brought by a Spanish man, Mario Costeja González, after he failed to secure the deletion of an auction notice of his repossessed home dating from 1998 on the website of a mass circulation newspaper in Catalonia.Costeja González argued that the matter, in which his house had been auctioned to recover his social security debts, had been resolved and should no longer be linked to him whenever his name was searched on Google.He told the Guardian: "Like anyone would be when you tell them they're right, I'm happy. I was fighting for the elimination of data that adversely affects people's honour, dignity and exposes their private lives. Everything that undermines human beings, that's not freedom of expression."The European court judges ruled that under existing EU [data protection](http://www.theguardian.com/technology/data-protection) laws Google has to erase links to two pages on [La Vanguardia](http://www.lavanguardia.com/index.html)'s website from the results that are produced when Costeja González's name is put into the search engine. The European judges made clear that in their view the EU data protection directive already established a "[right to be forgotten](http://www.theguardian.com/technology/right-to-be-forgotten)". This appears to pre-empt lengthy negotiations within the EU over a new data protection directive which could establish a limited "right to be forgotten".

## Data= harms

Travis and Arthur 14

EU court backs 'right to be forgotten': Google must amend results on request Individuals have right to control their data and can ask search engines to remove results, says European court; in “The Guardian”. By [Alan Travis](http://www.theguardian.com/profile/alantravis) and [Charles Arthur](http://www.theguardian.com/profile/charlesarthur) [The Guardian](http://www.guardian.co.uk/theguardian), Tuesday 13 May 2014. Online at: http://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results

The judges said they had found that the inclusion of links in the Google results related to an individual who wanted them removed "on the grounds that he wishes the information appearing on those pages relating to him personally to be 'forgotten' after a certain time" was incompatible with the existing data protection law. They said the data that had to be erased could "appear to be inadequate, irrelevant or no longer relevant or excessive … in the light of the time that had elapsed". They added that even accurate data that had been lawfully published initially could "in the course of time become incompatible with the directive". In technical terms the ruling establishes that a search engine such as Google must be regarded as a "data controller" under the data protection laws in those EU countries where it establishes a branch to promote and sell advertising.

## RTBF needed now

Grossman 14

“You have the right to be forgotten” by Lev Grossman, a journalist, in Time. May 15, 2014. Online at: http://time.com/100553/you-have-the-right-to-be-forgotten/

Whether or not its ruling is enforceable, the Court of Justice has hit upon an elusive truth about the way we live now, one that’s probably easier to see from Luxembourg than it is from Mountain View. Public information isn’t just public: the meaning of public has changed. Just as we’re altering the physical climate we live in, we’ve changed our information environment too. Information used to propagate slowly, pooling and collecting in some places but not others. Now it propagates instantly and evenly, everywhere at once. The past is supposed to fade and blur, but the Internet keeps our entire lives relentlessly in focus, for everyone, forever.

The Court of Justice has reminded us that we don’t necessarily have to accommodate ourselves to technology; we can demand that technology adapt itself to us. Just because something is technologically feasible, and part of a business plan, doesn’t mean it’s a good thing. In a way it’s too late for González: no one’s ever going to forget about that real estate auction now. Nevertheless his point stands: the past isn’t what it used to be. But maybe it should be

## RTBF k2 “normal people”

Grossman 14

“You have the right to be forgotten” by Lev Grossman, a journalist, in Time. May 15, 2014. Online at: http://time.com/100553/you-have-the-right-to-be-forgotten/

The advent of the Internet, however, has changed everything. Once information is online, it can be forever instantly accessible through search engines. No need to dig through archives or court records for the record of Costeja’s debt—it was at your fingertips if you searched his name, whether or not you even wanted to know. A quarter-century ago, there would have been little chance that Costeja would still have to explain himself to an employer or landlord or client or prospective date. The newspaper story would still exist on microfilm somewhere, but practically speaking, it would be gone.

The problem of old embarrassments or troubles living forever online is one that American law does not yet address. And it’s a problem that is actually worse for people who are not public figures—the people who are supposed to receive greater privacy protections from the law. If you’re a movie star, or even a blogger, Google will turn up dozens of new links when someone searches your name, and the old, embarrassing ones will quickly be buried. But if you’re just a regular person, a news story is likely to continue to surface at the top of your Google results. Searchers may find additional information about you on Facebook and other social media, some of which may end up on the open Web. So we have to warn our children not to post anything about themselves online that might cause an employer to raise an eyebrow decades hence. But this is an impossible standard. Our children can’t stop their friends (or enemies) from posting drunken photos or a heedless rant, barnacles that will cling to them for years. You can beg people to take down offending images and text. If you really work at it and spend money on a lawyer, you might be able to get a court order. But all of the effort will be wasted if the telltale content has already been copied and pasted elsewhere and then swept into Google’s servers. That’s why the European court’s focus on search results is key—the problem isn’t the continuing online existence of the information you want to hide. It’s how easy it is to find.

## Lol First Amendment

Grossman 14

“You have the right to be forgotten” by Lev Grossman, a journalist, in Time. May 15, 2014. Online at: http://time.com/100553/you-have-the-right-to-be-forgotten/

It’s hard to imagine a “right to be forgotten” in the United States. The First Amendment will protect Google, or any other company, that resurfaces or publishes information that’s already public. This is especially true of official records, like a property auction, but also applies to pretty much anything that has not been found by a court to be defamatory. By contrast, the right to be forgotten allows courts to balance the public’s interest in knowing this information against the ordinary person’s right to be left alone. Critics of the European right to be forgotten need to explain why they disagree with the balance between free expression and privacy that the law reached until the digital era—when the barrier of the physical search almost always provided adequate protection for privacy. Shouldn’t new laws and rulings, like the one this week, give people back the privacy that technology has taken away? One response is that we are better off with an unfettered Web because now we can learn people’s entire history before lending money to them, hiring them, renting apartments to them, or dating them. Our loss in privacy is offset by our gain from the loss of privacy of others. But U.S. law should do more to protect our privacy than it does right now. That means the type of balancing endorsed by the European Court of Justice. Privacy allows us to experiment, make mistakes, and start afresh if we mess up. It allows us to reinvent ourselves, or at least maintains the valuable illusion that reinvention is possible. It is this potential for rehabilitation, for second chances, that is under assault from Google. By selling ads against it, Google makes money on private information about you and me. Shouldn’t the company pay the modest cost of ensuring that long-ago embarrassing information, of little meaning to others, doesn’t turn up at the top of a search?

In the old days, Europeans who wanted to forget their pasts would come to America for a fresh start. Today, one would head in the opposite direction.

## Impact magnifier

Randazza 14

“We need a ‘right to be forgotten’ online. In CNN online May 15, 2014, by Marc J. Randazza, a Las Vegas-based First Amendment attorney and managing partner of the Randazza Legal Group. He is licensed to practice in Arizona, California, Florida, Massachusetts and Nevada. The opinions expressed in this commentary are solely those of the author. Article can be found online at: http://www.cnn.com/2014/05/14/opinion/randazza-google-right-to-privacy/

We should be jealous of our friends in Europe. As Europe protects individual rights, America persists in its belief that rights are for big corporations, people be damned.

 Does Google know too much about us? Your G-mail is watching you Google to pay $7 million in privacy case Getting caught on Google maps

Until recently, humans had comfort in knowing that mistakes were rarely forever. But the Internet has brought us a "mistakes are forever" society.

Now, even a financial hiccup 16 years ago remained as prominent for Gonzalez, as if it happened yesterday. Now, a revenge porn picture will remain on a victim's Google results forever, victimizing the subject every day. Even deserved criticism, like an old criminal record, will remain forever -- as if it happened yesterday. Time is no longer linear for us.

## A2: Censorship

Hendel 12

Why Journalists Shouldn't Fear Europe's 'Right to be Forgotten' By John Hendel a journalist; JAN 25 2012: Available online at: http://www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldnt-fear-europes-right-to-be-forgotten/251955/s

A year ago, the rhetoric surrounding Europe's proposed new right inspired fear -- and rightfully so. The right emanates from Europe's rights of personality, and scholars like Georgetown Law's Franz Werro traced the right to Article 8 of the European Convention on Human Rights, which enshrined the privacy concerns of personality as a counterbalancing force to the free expression principles that had developed across the ocean in America's First Amendment. Put simply, Europe had formally enshrined a right to privacy where the U.S. has struggled to do so. Werro considered how such privacy rights evolved in Switzerland and noted how Swiss TV once blocked the airing of a documentary about decades-old criminal cases because the government no longer deemed them part of the public domain. In a [2009 paper](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1401357), Werro declared that hypothetically "in the context of a conflict between the right to be forgotten and the freedom of the press, the European Court will balance the competing interests and may well consider that in certain cases privacy rights trump the right to publish." Cue cries of censorship. In January of 2011, Google's Peter Barron warned of a "profound chilling effect" and a former colleague of mine, news editor Padraig Reidy of the British magazine Index on Censorship, offered the following brusque note in the [Guardian](http://www.guardian.co.uk/technology/2011/jan/16/google-court-spain-privacy?INTCMP=SRCH): "It encroaches on privacy law, and has massive ramifications on freedom of expression ... It looks like a plan by people who don't know how the Internet works." Google has wisely attempted to avoid the role as a moral or editorial judge of the content it processes. But today in January of 2012, what the EU is proposing shouldn't worry proponents of free expression. Reding suggests not a right based on that case in Spain or cases where German criminals hounded Wikipedia to erase their traces or where Italians sued Google execs over offensive videos a user had posted. The name, of course, is the same. Reding still casually refers to "the right to be forgotten," employing the same language she first did in November of 2010 when she announced the EU would consider clarifying it. Yet the definition of the right to be forgotten has substantially shifted from what was being discussed a year ago. Back then, the right would have potentially given people the ability to cull any digital reference -- from the public record, journalism, or social networks -- they deemed irrelevant and unflattering; today, the EU specifies that the data people have a right to remove is, according to Reding, "personal data [people] have given out themselves." This provision is key. The overhaul insists that Internet users control the data they put online, not the references in media or anywhere else.  "It is clear that the right to be forgotten cannot amount to a right of the total erasure of history," Reding noted in her Sunday speech. "Neither must the right to be forgotten take precedence over freedom of expression or freedom of the media."

Bingo. There we hear the reassuring buzzwords. These new European proposals will transform the world's business and technological landscape but they will not signal an ideological rift in quite so dramatic a way as last year's legal cases and dialogue implied. They shouldn't worry proponents of free speech.

## A2: Jurisdictions overlap

Best 14

June 5 2014; The right to be forgotten: Can we really trust Google to decide when our data should die? In ZDnet, by journalist Jo Best. Online at: http://www.zdnet.com/the-right-to-be-forgotten-can-we-really-trust-google-to-decide-when-our-data-should-die-7000030218/

Now, Google will have to wade through those requests, decide which have merit and which are spurious, malicious, or unwarranted, and remove the links from search results where appropriate. Alternatively, it must decide where the right to know outweighs the right to privacy, and which links should stay. Making those decisions is a big job, and an important one. Under UK law, criminal convictions can be spent — after a period of time, those convicted do not have to disclose their previous offences when applying for a job, for example. Now Google will have to decide when mentions of them are no longer relevant to an individual, and allow them to be 'spent' on the internet too. Should it take six months, a year, a decade for that to come to pass? How should the nature of the offence be factored into its current relevance? How should a person's right to move on from their past be balanced against other individuals' right to know? For the moment, Google is flying blind on where the right to be forgotten should come into play. While the ECJ gave some guidance in its ruling, the practicalities now need to be thrashed out. Yesterday, European privacy watchdogs met in Brussels to begin working on guidelines for how Google, and other online companies, should handle 'right to be forgotten' requests. [According to the Wall Street Journal](http://online.wsj.com/articles/eu-regulators-take-aim-at-google-search-privacy-conflicts-1401813451), those guidelines are expected to be ready in September, with the aim of making sure the process of handling removal requests, and appeals against any that are rejected, is consistent across all member states of the European Union.

Until those guidelines are published, Google will have to use its own judgement. Or rather, the judgement of a council of advisers including Wikipedia founder Jimmy Wales and Luciano Floridi, a philosopher at the Oxford Internet Institute, who will be part of the team that will shape Google's policy following the ECJ ruling.

## A2: Disads

Travis and Arthur 14

EU court backs 'right to be forgotten': Google must amend results on request Individuals have right to control their data and can ask search engines to remove results, says European court; in “The Guardian”. By [Alan Travis](http://www.theguardian.com/profile/alantravis) and [Charles Arthur](http://www.theguardian.com/profile/charlesarthur) [The Guardian](http://www.guardian.co.uk/theguardian), Tuesday 13 May 2014. Online at: http://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results

They also made clear that there is a balancing public interest defence against deletion, especially if the individual is involved in public life. But the judges say that it is the role of a search engine in being able to create a "ubiquitous" list of results that can easily provide a 'more or less detailed' profile of the private life an individual that "heightens" the interference with privacy rights.

The case is the first of more than 200 cases in the pipeline against Google in which Spanish citizens want the search engine to delete personal information about them from their search results.

The ruling makes clear that a search engine such as Google has to take responsibility as a "data controller" for the content that it links to and may be required to purge its results even if the material was previously published legally. Data protection lawyers said the ruling meant that Google could no longer be regarded legally as a "neutral intermediary"

The EU judges pointed out that they were requiring Google to remove its links to two pages on La Vanguardia's website even though the Spanish data protection agency had rejected Costeja González's complaint against the newspaper and said it had published the information about him lawfully.

Legal experts said the ruling could give the go-ahead to deletion requests of material including photographs of embarrassing teenage episodes and even insults on social media websites and could lead to a rethink in the way they handle links to content on the web.

The EU justice commissioner, Viviane Reding, welcomed the court's decision, saying it was a clear victory for the protection of the personal data of Europeans. "The ruling confirms the need to bring today's data protection rules from the 'digital stone age' into today's modern computing world," she said in a [post on Facebook](https://www.facebook.com/pages/Viviane-Reding/291423897690447).

## A2: Public interest

Randazza 14

“We need a ‘right to be forgotten’ online. In CNN online May 15, 2014, by Marc J. Randazza, a Las Vegas-based First Amendment attorney and managing partner of the Randazza Legal Group. He is licensed to practice in Arizona, California, Florida, Massachusetts and Nevada. The opinions expressed in this commentary are solely those of the author. Article can be found online at: http://www.cnn.com/2014/05/14/opinion/randazza-google-right-to-privacy/

Is this how we want to live? Sdhould we not have a right to be forgotten? During the Cold War, we despised totalitarian regimes that kept a dossier on every citizen, holding compromising information in store for the day that it served to discredit him or her. I remember learning that the FBI kept files on dissidents in the '60s and '70s. I remember learning a few months ago, thanks to Edward Snowden, that the NSA is spying on us. Nobody thinks that is a good thing.

Big Data's reaction, like anything that reins in companies' rights to abuse us, was a shriek of little substance. Google doesn't like being told what to do, and critics raised an outcry about First Amendment rights.

Google could have instituted a responsible policy like this on its own. But Google's position is like that of a petulant child: "You're not the boss of me!" And that is why we can't have nice things.

Well, isn't there a little bad in this ruling?

Theoretically, yes. This could be abused to get rid of important truthful information. That is a bad thing, and I would find that intolerable if someone tried to abuse it to suppress legitimate criticism or information that the public has a right to know.

But the ruling does not say that old information must be deleted. It doesn't even say that Google has to comply with requests. It just says that if a European requests that information come down, Google must respect the request but can refuse if it has good cause.

And that good cause is where free expression and freedom of information remains intact. One critic asked whether ex-Nazis could use this ruling to hide their participation in the Holocaust. The answer to that is a resounding no.

The ruling ends with an admonishment. The "right to be forgotten" does not apply if it appears for "particular reasons": if there is good cause to interfere with the citizen's right to privacy, including "the role played by the data subject in public life," and if a majority of the evidence shows that the general public has a right to that information.

Sorry, old Nazis, you can't use this to hide your involvement in the Holocaust. In fact, public figures and public events will never be erased.

This ruling is for you, the average Jose who just wants to live an obscure and private life. If you lived in Europe, you would have regained that right today.

# \*\*\*NC\*\*\*

**I Negate:**

**Resolved: The “right to be forgotten” from internet searches ought to be a civil right.**

**Value: Because this resolution questions the balance between different rights in a society, the value for this debate should be Free Speech. This is because:**

“Freedom of speech and freedom of press”; and informational page produced by the Lincoln University, no date, online at: http://www.lincoln.edu/criminaljustice/hr/Speech.htm

On a communal level, free speech facilitates majority rule. It is through talking that we encourage consensus, that we form a collective will. Whether the answers we reach are wise or foolish, free speech helps us ensure that the answers usually conform to what most people think. Americans who are optimists (and optimism is a quintessentially American characteristic) additionally believe that, over the long run, free speech actually improves our political decision-making. Just as Americans generally believe in free markets in economic matters, they generally believe in free markets when it comes to ideas, and this includes politics. In the long run the best test of intelligent political policy is its power to gain acceptance at the ballot box. On an individual level, speech is a means of participation, the vehicle through which individuals debate the issues of the day, cast their votes, and actively join in the processes of decision-making that shape the polity. Free speech serves the individual’s right to join the political fray, to stand up and be counted, to be an active player in the democracy, not a passive spectator.

**And, the standard by which we should measure free speech is Opposing censorship.**

“Censorship, violence, and press freedom”; last updated 2014. At Article 19, a free speech advocacy group, online at: http://www.article19.org/pages/en/censorship-violence-press-freedom-more.html

Censorship in all its forms is often unjustifiable and is used simply to stop truths or ideas emerge which draw attention to powerful people or governments, or undermine ideology. This is inexcusable.When the exercise of the right to free expression clashes with the rights of others or threatens the safety of the nation, legislators face a difficult exercise of drawing lines; is a restriction necessary and how far should it go?

**Contention 1: The right to be forgotten is the worst form of censorship**

Rosen 12

A grave new threat to free speech from Europe, published by the New Republic, written by Jeffrey Rosen; Legal scholar. Posted on feb. 10 2012 @: http://www.newrepublic.com/article/politics/100664/freedom-forgotten-internet-privacy-facebook

But the most serious concerns about free expression are raised by the third category of takedown requests: things other people post about us. The proposed European regulation treats takedown requests for truthful information posted by others identically to takedown requests for photos I’ve posted myself that have then been copied by others: Both are included in the definition of personal data as “any information relating” to me, regardless of its source. I can demand takedown, and the burden, once again, is on the social networking site or search engine to prove that it falls within the journalistic, artistic, or literary exception. This could transform Google, Yahoo, and other hosts of third party content into censors-in-chief for the European Union, rather than neutral platforms.

It’s possible, of course, that although the European regulation defines the right to be forgotten very broadly, it will be applied more narrowly. Europeans have a long tradition of declaring abstract privacy rights in theory that they fail to enforce in practice. And the regulation may be further refined by the European parliament over the next year or so.

But, for now at least, there are plenty of reasons for concern. Currently, American companies doing business in Europe enjoy some exemptions from E.U. law, under a 1995 agreement. But should that agreement be altered, the [new right to be forgotten could be imposed](http://www.economist.com/node/21543489) on U.S. companies throughout Europe. It’s hard to imagine the Internet that results will be as free and open as it is now.**Contention 2: Efforts to incorporate the right to be forgotten fail**

Bowcott 13

Britain seeks opt-out of new European social media privacy laws, 'Right to be forgotten' laws, giving users – rather than services such as Facebook – control of personal data will save billions of euros and thickets of red tape. So why is Britain resisting? [Owen Bowcott](http://www.theguardian.com/profile/owenbowcott), legal affairs correspondent    [The Guardian](http://www.guardian.co.uk/theguardian), Thursday 4 April 2013 07.30; online at: http://www.theguardian.com/technology/2013/apr/04/britain-opt-out-right-to-be-forgotten-law

The UK is lobbying for the changes to be part of a directive, which would give the government more flexibility about how it is adopted, rather than being contained in a more prescriptive internal market regulation. Reding, who is from Luxembourg and also a vice-president of the European commission, stressed the new right to be forgotten would "not be absolute" and would be assessed in relation to other rights, such as freedom of expression, retention of medical records or data for tax purposes. It would, for example, permit students who post embarrassing pictures of themselves on social media sites to remove them at a later date. If those images had spread to a third party, however, the right of removal would be significantly diluted: the site that initially held them would be required to contact other sites to which it is linked informing them that a request had been made to erase information. "[There will be] no power to remove it from third parties but if a company has given it to another [firm] without asking if they can sell it, then the individuals' rights will be re-enforced." The right will not apply to journalistic archives, comments on articles or posts by bloggers, who will be exempted on the grounds of freedom of expression. Material posted by other people – friends or antagonists – would also remain unaffected: there is an exemption in data protection regulations for material of a "personal or household" nature.Reding added: "The European rules [will] apply to every company … which operates in the internal market. The EU is a large market with 500 million citizens. If you want to take advantage of this goldmine, then apply the rules. Facebook and such providers like the one-stop shop. They like the fact that the rules are the same everywhere. There's no opt-out. This is an internal market regulation. It's a decision that will be taken by majority rule." The case of the Austrian law student Max Schems, who battled Facebook for months to recover his personal data and eventually received 1,222 pages of material in 2011, is emblematic of the problems Reding believes need addressing. Facebook subsequently altered its data-retention policies as a result of the case. Ireland, where Google and Facebook's European headquarters are based, holds the presidency of the EU. It has said that enacting the data protection regulation is a key priority for its presidency, which ends in June. The UK's Information Commissioner's Office agrees that the new regulation will shift the balance between consumers and "data controllers". But it cautions: "Our concern is about how difficult (or impossible) this may be to achieve in practice and how it could lead individuals to believe falsely that they can achieve the absolute erasure of information about them. "We know from the efforts of well-resourced and motivated individuals that it can in fact be impossible to remove information from the internet once it has been posted. We are concerned that this right, as billed, could mislead individuals as to the degree of protection the law can offer them in practice." The London-based lobby group Privacy International is similarly sceptical. Anna Fielder, one of the organisation's trustees, said: "We think the right to erasure is essential and that's likely to stay; the right to delete your information once you have left a service provider. If you left a bank you wouldn't like them to keep your data for ever. "But it's no more than a right to delete your data. It's got so many exceptions. It's specifically targeted at Facebook users. For example, photos of drunken teenagers. [Facebook] should try and make all the people who have shared the data remove it as well. [But] it's not a compulsion. It has so many exceptions: freedom of expression, public interest in public health and scientific research."

# \*\*\*Neg Cards\*\*\*

## Rulings spill over

Graves 14

Zachary Graves; journalist. The huffington post; The Dangerous Proliferation of the 'Right to Be Forgotten' Posted: 06/18/2014: http://www.huffingtonpost.com/zachary-graves/the-dangerous-proliferati\_b\_5507477.html

Following on last month's ruling by the European Court of Justice that search engines could be forced to take down links that individuals believe infringe their privacy rights, a new ruling from the Supreme Court of British Columbia has ordered Google to remove content not just from its Canadian site, but from all of its global web properties. While the Canadian case deals with the sale of counterfeit products, rather than privacy, it embraces on the same logic to make its sweeping censorship demands. At the least, the case may confirm widespread fears that the ruling by Europe's highest court, which applies even to links that are factual and in the public record, could spread a newfound "right to be forgotten" across the globe, opening the door for disgraced politicians, sex offenders, and malpractice-burdened doctors to wipe their slate clean. But in some ways, the British Columbia decision poses a threat even more dangerous than the fear that courts would pave the way for a fragmented, balkanized Web and lay the foundation for what the Wall Street Journal editorial board warned would be "an Internet with borders." The Canadian case arguably establishes a precedent of national and even local courts handing down dictums that affect freedom of speech around the entire world. University of Ottawa law professor Michael Geist explains on his blog: The ruling in Equustek Solutions Inc. v. Jack is unusual since its reach extends far beyond Canada. Rather than ordering the company to remove certain links from the search results available through Google.ca, the order intentionally targets the entire database, requiring the company to ensure that no one, anywhere in the world, can see the search results. Note that this differs from the European right to be forgotten ruling, which is limited to Europe. The Canadian court's ruling favorably cites the ECJ ruling in Google v. González, which I wrote about in detail here, and relies heavily on it in its effort to assert jurisdiction. If Google does business in Canada by advertising there, then logically, the Canadian court system has jurisdiction over Google's global search results.

## Overlapping jurisdications

Graves 14

Zachary Graves; journalist. The huffington post; The Dangerous Proliferation of the 'Right to Be Forgotten' Posted: 06/18/2014: http://www.huffingtonpost.com/zachary-graves/the-dangerous-proliferati\_b\_5507477.html

Of course, the court isn't simply asking Google to remove specific links. Having determined that "deletion of individual URLs is ineffective" like "an endless game of 'whac-a-mole,'" the court instructed Google to prevent similar content from showing up anywhere for any reason -- indefinitely.

But what happens when a takedown order in one country conflicts with the law in another? This happened in the French court case of Yahoo! Inc. v. LICRA. The case concerned the sale of Nazi artifacts on Yahoo's auction site, which ran afoul of a French law banning the display of Nazi paraphernalia. When the French court made the bold claim that it had authority over Yahoo's servers in the United States, Yahoo asked a U.S. court to block the ruling on grounds it conflicted with its First Amendment rights and to "confirm that a non-U.S. court does not have the authority to tell a U.S. company how to operate." While the U.S. court agreed with Yahoo, the company also had substantial business activities in France that could be brought to a halt if it didn't comply. The end result was that Yahoo banned the sale of these objects, even though the French court's decision was ultimately reversed on other grounds. This case foreshadows some of the strange scenarios and chilling effects that could emerge when regional courts claim jurisdiction over the whole Internet. Geist imagines a few of these: The implications are enormous since if a Canadian court has the power to limit access to information for the globe, presumably other courts would as well. While the court does not grapple with this possibility, what happens if a Russian court orders Google to remove gay and lesbian sites from its database? Or if Iran orders it remove Israeli sites from the database? The possibilities are endless since local rules of freedom of expression often differ from country to country.

As western democracies find ways to limit content online, it gives more heavy-handed governments like Russia an excuse to jump on the global Internet censorship bandwagon. The Russian Public Chamber has already submitted a recommendation to the Russian Parliament calling for the introduction of a right to be forgotten that would affect not only Russian search engines, but also foreign ones like Google and Yahoo. Countries like China and Korea are also seeking to assert their right to censor the global Internet. It's hard to imagine why Internet censorship would be the first, best option in any legal dispute. Particularly where other legal remedies seem obvious. People depend on search engines like Google and Yahoo to be an accurate and open gateway to the web. Allowing any country to leverage privacy or other legal claims to limit search engine content globally will leave us with the lowest common denominator for free speech rights. And that could do a lot of damage to our free and open Internet.

## Data overstretch

Woollacott 14

Forbes; [Emma Woollacott](http://www.forbes.com/sites/emmawoollacott/) , journalist 6/27/2014 How Europe's Right To Be Forgotten Affects Your Business: http://www.forbes.com/sites/emmawoollacott/2014/06/27/how-europes-right-to-be-forgotten-affects-your-business/

Yesterday, Google started pulling certain search results to comply with the [recent EU ruling](http://www.forbes.com/sites/emmawoollacott/2014/05/13/europeans-can-now-force-google-to-strike-irrelevant-search-results/) on the ‘right to be forgotten’, allowing individuals to ask for the removal of links to personal information.

The move follows a European Court of Justice ruling last month that Google and other search engines are data controllers, and therefore responsible for the content that they display. As such, they’re  subject to the Data Protection Directive, meaning that they are required to remove links that are  “inadequate, irrelevant or no longer relevant”. Google is struggling to deal with the workload, having received over 41,000 requests in the first four days alone. It’s now updated its technical infrastructure, started ploughing through the backlog, and is implementing successful requests. But the decision has implications for other businesses too. Google had argued that, because it didn’t control the information on the sites it linked to, it wasn’t a data controller. But the court saw things differently. Because the company “determined the purposes and means of the processing of personal data”, then it is a data controller, the judges [ruled](http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf). “The practical upshot is that a [business](http://www.forbes.com/business/) does not have to have control over the information itself in order to be considered a data controller for the purposes of the directive,” says Richard Beavan, a partner with law firm Boodle Hatfield. “All that is necessary is for the business to have some control over when and where the data is displayed.”

## Hurts individuals, and facebook

Woollacott 14

Forbes; [Emma Woollacott](http://www.forbes.com/sites/emmawoollacott/) , journalist 6/27/2014 How Europe's Right To Be Forgotten Affects Your Business: http://www.forbes.com/sites/emmawoollacott/2014/06/27/how-europes-right-to-be-forgotten-affects-your-business/

This, then, is a ruling that could affect many more businesses than the search engines on which so much attention has been focused. Social media sites are an obvious example; but other businesses, too, could be subject to the rules. While journalistic sites are specifically excepted from the ruling, blogs may well not be – and many other websites contain search features or external links. Even private individuals may find themselves in the position of data controllers. There’s an exception in the law for the “processing of personal data by a natural person, without any gainful interest, in the course of his or her own exclusively personal or household activity”. However, the key word here is “exclusively” – public posts may not comply. In a [paper](http://www2.warwick.ac.uk/fac/cross_fac/iatl/reinvention/issues/volume7issue1/smith/), Kathryn Smith of Monash University’s Faculty of Law gives the example of a [Facebook](http://www.forbes.com/facebook-ipo/) user who posts unflattering pictures of a friend on the site. “Ben decides to take photographs of Amy drinking and partying on his mobile phone, and uploads them immediately to Facebook,” she writes. “Ben chooses the audience to which the photographs are viewable: he can even make the photographs publicly accessible, allowing them to be indexed by search engines such as Google. Ben chooses whether or not he will notify Amy of the photographs through a ‘tag’, and he chooses how to caption the photograph.” In practice, it’s likely to be the social network itself that carries the can in such cases involving private individuals: Facebook, for example, could extend its existing takedown process to automatically remove disputed photos.

But this doesn’t let everybody off the hook: under the regulations, Facebook users may be regulated as data controllers if they receive a “gainful interest” – a description that could clearly apply to brands.

Part of the judgement hinged on whether Google is “established” in the EU – the company claimed that it wasn’t, on the basis that its servers are in the US. But, ruled the court, its data was being processed “in the context of the activities of Google Spain”, because Google Spain promotes and sells advertising space offered by Google Inc. And the same argument will apply to many non-EU businesses that could previously have thought they were in the clear.

## Laws= Unclear

Woollacott 14

Forbes; [Emma Woollacott](http://www.forbes.com/sites/emmawoollacott/) , journalist 6/27/2014 How Europe's Right To Be Forgotten Affects Your Business: http://www.forbes.com/sites/emmawoollacott/2014/06/27/how-europes-right-to-be-forgotten-affects-your-business/

There’s a distinct lack of clarity about the ruling, which will likely lead to more legal disputes. However, the EU is currently debating a new EU General Data Protection [Regulation](http://www.forbes.com/regulation/) that will replace the current directive, extending the territorial reach of EU data protection laws to make it clear that they apply no matter where EU residents’ personal data is collected. Companies need to be prepared.

## RTBF Fails, UK proves

Bowcott 13

Britain seeks opt-out of new European social media privacy laws, 'Right to be forgotten' laws, giving users – rather than services such as Facebook – control of personal data will save billions of euros and thickets of red tape. So why is Britain resisting? [Owen Bowcott](http://www.theguardian.com/profile/owenbowcott), legal affairs correspondent    [The Guardian](http://www.guardian.co.uk/theguardian), Thursday 4 April 2013 07.30; online at: http://www.theguardian.com/technology/2013/apr/04/britain-opt-out-right-to-be-forgotten-law

Britain is attempting to opt out of a European initiative enabling anyone to delete their personal details from online service providers – a power known as the "[right to be forgotten](http://www.theguardian.com/technology/right-to-be-forgotten)".

The clash between Brussels and the Ministry of Justice has erupted in the final stages of negotiations over the EU's General [Data Protection](http://www.theguardian.com/technology/data-protection) Regulation, which aims to rebalance the relationship between the individual and the [internet](http://www.theguardian.com/technology/internet).

The debate reflects growing tensions between freedom of expression and privacy as increasing numbers of people complain that their online reputation is being corroded by outdated, inaccurate or malicious information that cannot be removed. In France, the number of complaints concerning the right to be forgotten rose 42% last year. A [Guardian project](http://www.guardian.co.uk/technology/series/internet-privacy-the-right-to-be-forgotten) has unearthed hundreds of cases of people alarmed at the mishandling of their data or personal information.

The UK's chief objection to the EU move is that unrealistic expectations will be created by the right's expansive title because the controls proposed will be relatively modest in their impact on the way data spreads, or is traded, across websites.

The right to be forgotten, article 17 of the Data Protection Regulation, has been developed by the EU justice commissioner's office primarily in response to complaints about the way [social media](http://www.theguardian.com/media/social-media), such as Facebook, retain and handle information. Although the terms of the regulation have not yet been finalised, its current form provides for punitive fines – up to 2% of global turnover – for companies that refuse to comply with requests to erase customers' personal details.

Viviane Reding, the EU justice commissioner, said: "At present a citizen can request deletion only if [data is] incomplete or incorrect. We want to extend this right to make it stronger in this internet world. The burden of proof shall be on the companies. They will have to show that data is needed.

"This piece of legislation is one of the biggest market-openers of the last few years. It eliminates 27 conflicting rules [one for each EU state] and replaces them with ... a mechanism for the whole continent. This means saving €2.3bn (£1.9bn) a year.

"[But] the British government have asked us not to do this and [would prefer] two laws: one for Britain and one for other people, meaning there would be separate layers of complication. I have exchanged letters with [the UK justice secretary] Chris Grayling on this, which is rather like Kafka. Britain is meant to oppose red tape; here Britain wants a supplementary layer of red tape. It's crazy. The UK wants 27 rules – one for each country."

In a letter to Grayling dated 8 March, Reding wrote: "You raise the possibility of specific rules for SMEs [small and medium-sized enterprises] which operate nationally rather than cross-border.

"I am surprised to learn that it would be the intention of the UK to introduce a new layer of complexity, cost and risk of non-compliance by having one set of obligations for domestic operations and one for cross-border operations."

## RTBF impossible

Bowcott 13

Britain seeks opt-out of new European social media privacy laws, 'Right to be forgotten' laws, giving users – rather than services such as Facebook – control of personal data will save billions of euros and thickets of red tape. So why is Britain resisting? [Owen Bowcott](http://www.theguardian.com/profile/owenbowcott), legal affairs correspondent    [The Guardian](http://www.guardian.co.uk/theguardian), Thursday 4 April 2013 07.30; online at: http://www.theguardian.com/technology/2013/apr/04/britain-opt-out-right-to-be-forgotten-law

The MoJ said: "The UK does not support the right to be forgotten as proposed by the European commission. The title raises unrealistic and unfair expectations of the proposals.

"We are also concerned about potentially impossible requirements for data controllers to manage third-party erasure; the 'reasonable steps' required by the draft regulation would promise much, but deliver little."

Stewart Room, a privacy specialist at the law firm Field Fisher Waterhouse, said article 17 covers where consent is withdrawn for information being held. "This is intended to address the idea that a kid may stick something on Facebook and later on there should be a way of taking it down.

"In Silicon Valley, there's a lot of venture capital going into tech companies that can achieve erasure of data. There's a lot of demand in the market for cleansing online information."

Richard Allan, Facebook's director of policy for Europe, Middle East and Africa, said: "The core concept that you as a data subject should be able to delete your personal data is absolutely reasonable. It's something we implement on our service.

"[But] we have concerns about about the workability and consequences of a mechanism where organisations start sending each other instructions about data that needs to be removed. Our worry is that it will take up resources and won't be effective."

## Other mechanisms solve erasure

Bowcott 13

Britain seeks opt-out of new European social media privacy laws, 'Right to be forgotten' laws, giving users – rather than services such as Facebook – control of personal data will save billions of euros and thickets of red tape. So why is Britain resisting? [Owen Bowcott](http://www.theguardian.com/profile/owenbowcott), legal affairs correspondent    [The Guardian](http://www.guardian.co.uk/theguardian), Thursday 4 April 2013 07.30; online at: http://www.theguardian.com/technology/2013/apr/04/britain-opt-out-right-to-be-forgotten-law

Individuals, he said, should approach data controllers directly to ask for material to be removed. Facebook, which has a billion users, has a social reporting mechanism that allows users to request that material is taken down from other accounts on the site, Allan said. "Our users like the mechanism.

"We think the most responsible service providers will offer the right to erasure. Where people are dealing with irresponsible service providers it may be that the national data protection authorities take action." A different legal development that could be equally far-reaching emerged in a UK court of appeal judgment this year in the case of Tamiz vs Google, which ruled that, in principle, the internet search engine may also be a publisher and therefore liable to defamation proceedings for material on a blog hosted on one of its platforms.

## RTBF kills free speech

Rosen 12

A grave new threat to free speech from Europe, published by the New Republic, written by Jeffrey Rosen; Legal scholar. Posted on feb. 10 2012 @: http://www.newrepublic.com/article/politics/100664/freedom-forgotten-internet-privacy-facebook

At the end of January, Viviane Reding, the European Commissioner for Justice, Fundamental Rights, and Citizenship, announced a sweeping new privacy right: the “right to be forgotten.” The [proposed right](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf) would require companies like Facebook and Google to remove information that people post about themselves and later regret—even if that information has already been widely distributed. The right is designed to address a real and urgent problem in the digital age: It’s very hard to escape your past on the Internet now that every photo, status update, and tweet lives forever in the digital cloud. But the right to be forgotten takes a dangerously broad approach to solving the problem. In fact, it represents the biggest threat to Internet free speech in our time.

The new right’s intellectual roots can be found in French law, which recognizes [le droit à l’oubli](http://barcorefblog.blogspot.com/2011/03/le-droit-loubli-do-we-have-right-to.html)—or the “right of oblivion”—a right that allows a convicted criminal who has served his time and been rehabilitated to object to the publication of the facts of his conviction and incarceration. (In America, by contrast, publication of someone’s criminal history is protected by the First Amendment.) Now that the Internet records everything and forgets nothing, European regulators have concluded that the difficulty of escaping one’s past is not merely a problem for criminals—but instead applies to everyone.

## Backlog

Best 14

June 5 2014; The right to be forgotten: Can we really trust Google to decide when our data should die? In ZDnet, by journalist Jo Best. Online at: http://www.zdnet.com/the-right-to-be-forgotten-can-we-really-trust-google-to-decide-when-our-data-should-die-7000030218/

And with 41,000 requests already made and more to come, that's a lot of due consideration. Google said it will either redeploy workers to process the flood of requests, or hire more staff to handle them, a [source told the WSJ](http://online.wsj.com/articles/right-to-be-forgotten-requests-still-rolling-into-google-1401801079). It's difficult to see how Google could deal with thousands of requests seriously without extra resources — even if each request takes only an hour to deal with, Google would still need a team of 20 people working full time for a year to deal with the 41,000 requests it's already received. There is no word yet on who these new or existing staff — who will be making the decisions every day on how that tricky balance between the right to know and the right to be forgotten should be struck for individuals — will be.

## Argentina proves

Rosen 12

A grave new threat to free speech from Europe, published by the New Republic, written by Jeffrey Rosen; Legal scholar. Posted on feb. 10 2012 @: http://www.newrepublic.com/article/politics/100664/freedom-forgotten-internet-privacy-facebook

Moreover, the right to be forgotten can be asserted not only against the publisher of content (such as Facebook or a newspaper) but against search engines like Google and Yahoo that link to the content. In Argentina, which recognizes a version of the right to be forgotten, there are more than one hundred cases demanding the removal of user-generated content brought by entertainers and celebrities, such as the Sports Illustrated swimsuit model Yesica Toscanini. As a result, when a user of Yahoo Argentina plugs Toscanini’s name into the Yahoo search engine, the result is a blank page and a judicial order.

## Censorship link magnifier

Best 14

June 5 2014; The right to be forgotten: Can we really trust Google to decide when our data should die? In ZDnet, by journalist Jo Best. Online at: http://www.zdnet.com/the-right-to-be-forgotten-can-we-really-trust-google-to-decide-when-our-data-should-die-7000030218/

Sitting alongside the collection of independent experts will be Google's chief legal officer David Drummond and its chairman Eric Schmidt, both of whom expressed their disappointment with the ECJ's initial ruling: Drummond said it "went too far. It didn't consider adequately the impact on free expression," while Schmidt added the case was "a collision between the right to be forgotten and the right to know", and the [court had struck the wrong balance between the two](http://www.zdnet.com/googles-schmidt-says-europes-right-to-be-forgotten-ruling-got-it-wrong-7000029482/).

A form of censorship? Those who oppose the ruling have chiefly done so on the grounds that it poses a threat to the freedom of expression and the public's right to know — they consider it a form of censorship. Whether they're correct is a difficult question to answer. In the case of the Spanish national, the two newspaper articles at issue remain online and likely to have been more widely read as a result of the ECJ ruling than if he had brought no case before the court. The information it contains is not inaccurate, remains available on the site on which it was published, and can be searched for, and returned as a result, if terms other than the man's name are used in Google, or if his name is searched for in other search engines, or Googled outside of the European Union. In that sense, the information about the man is not censored. Yet, for many people, Google is the gatekeeper of the web — their first and last stop in finding information. The infamous 10 blue links will largely be the only things a user sees when they're looking for any given piece of information online. If Google stops returning particular links in its search results, that means a great section of the online population won't ever see them. But those decisions are ones it makes already — by consigning a particular website to the fifth page of results, it's censoring much in the same way as removing it under a right to be forgotten request. So, if Google is to stop linking to certain web pages, it's a serious decision, and requires due consideration.

## Turn: Right to remember good

Solon 14

People have the right to be forgotten, rules EU court [POLITICS](http://www.wired.co.uk/broad-topics/politics) 13 MAY 14 by [OLIVIA SOLON](http://www.wired.co.uk/search/author/Olivia%2BSolon): http://www.wired.co.uk/news/archive/2014-05/13/right-to-be-forgotten-ruling

People should be able to ask Google to 'delete' information about them that they'd like to be forgotten from its search engine results, even when that data is published on third party sites, ruled [Europe's highest court today](http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf) (13 May). "If, following a search made on the basis of a person's name, the list of results displays a link to a web page which contains information on the person in question, that data subject may approach the operator directly and, where the operator does not grant his request, bring the matter before the competent authorities in order to obtain, under certain conditions, the removal of that link from the list of results," said the judges from the Court of Justice of the European Union in a ruling. One person's right to be forgotten may be another person's right to remember Whether or not people should have the "right to be forgotten" has been a subject of debate for a number of years. Today's ruling relates to a case between Google and the Spanish data protection agency. It was triggered in 2010 when Spanish national Mario Costeja González complained to the Agencia Española de Protección de Datos that when anyone searched for his name in Google, the top results would contain two links to a 1998 story on newspaper La Vanguardia's website about an auction for his repossessed home. He argued that Google's search results represented an infringement of his privacy. 180 similar cases in Spain came forward, all of whom wanted Google to stop indexing personal information about them -- effectively deleting it from the web. Costeja González initially requested that La Vanguardia be required either to remove or alter the pages in question. The data protection agency rejected that complaint saying that it had been lawfully published and was accurate. The complaint against Google was upheld, and the search giant was asked to withdraw data from its index so that people could no longer access the stories. Google brought action to Spain's high court seeking to overturn the decision, which led the case to being referred to the Luxembourg-based European Court of Justice. Critics of the right to be forgotten -- including Google -- say that removing legal but undesirable information from the web is tantamount to censorship. Secondly, Google does not host the data, it merely points to it, and therefore should not be responsible for policing the data. Today's ruling suggests that search engines are, in fact, responsible for the content that they point to -- a responsibility that search engines have traditionally shirked. This could potentially open a huge can of worms for Google and other search engines who are likely to be faced with a flood of similar requests from across Europe. The ruling is particularly surprising as in June 2013, the Advocate General for the Court of Justice of the European Union Niilo Jääskinen, [ruled that](http://www.dmlp.org/blog/2013/cjeu-advocate-general-finds-no-right-be-forgotten-search-engines-under-eu-law) giving data subjects a right to be forgotten would "entail sacrificing pivotal rights such as freedom of expression and information" and should not even be considered on a case-by-case basis since it would give search engines the awkward role of web censor. The judges said that "by searching automatically, constantly and systematically for information published on the internet, the operator of a search engine 'collects' data" according to EU data protection law. In the process of indexing websites, Google "'retrieves', 'records' and 'organises' the data in question, which it then 'stores' on its servers and, as the case may be, 'discloses' and 'makes available' to its users in the form of lists of results". This must be considered processing data, and as a consequence, Google is a data controller and must be responsible for the content contained in the links even if the information has already been published by a media organisation.

There are a huge number of issues with the right to be forgotten. Perhaps the most glaringly obvious one is that one person's right to be forgotten may be another person's right to remember. Whose right wins out in this case? In the ruling, the judges recognise that there may be a public interest in the information someone wants deleted and that "fair balance" between that interest and the data subject's right to privacy should be sought. A Google spokesperson said: "This is a disappointing ruling for search engines and online publishers in general. We are very surprised that it differs so dramatically from the Advocate General's opinion and the warnings and consequences that he spelled out. We now need to take time to analyse the implications."

## A2: no impact on speech

Rosen 12

A grave new threat to free speech from Europe, published by the New Republic, written by Jeffrey Rosen; Legal scholar. Posted on feb. 10 2012 @: http://www.newrepublic.com/article/politics/100664/freedom-forgotten-internet-privacy-facebook

In endorsing the new right, Reding downplayed its effect on free speech, and press accounts have been similarly reassuring. In [a post at The Atlantic](http://www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldnt-fear-europes-right-to-be-forgotten/251955/), John Hendel wrote that “the overhaul insists that Internet users control the data they put online, not the references in media or anywhere else.” But the regulations that were actually proposed on January 25 are not limited to personal data people have posted themselves; instead, they create a much broader right to delete personal data, defined broadly as “[any information relating to a data subject](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf).” In a [widely cited blog post](http://peterfleischer.blogspot.com/2011/03/foggy-thinking-about-right-to-oblivion.html) last March, Peter Fleischer, chief privacy counsel of Google, noted that the right to be forgotten, as discussed in Europe, can apply in three situations, each of which proposes progressively greater threats to free speech. The regulations that the European Commission proposed in January are troubling because they extend to all three. The first category is the narrowest: “[If I post something online, do I have the right to delete it again?](http://peterfleischer.blogspot.com/2011/03/foggy-thinking-about-right-to-oblivion.html)” Since Facebook and other social networking sites already allow users to do this, creating a legally enforceable right here is mostly symbolic and entirely unobjectionable. It would also usefully put pressure on Facebook to abide by its own stated privacy policies, by allowing users to confirm that photos and other data have been deleted from its archives after they are removed from public display. But the right to delete data becomes far more controversial when it involves the second category: “[If I post something, and someone else copies it and re-posts it on their own site, do I have the right to delete it?”](http://peterfleischer.blogspot.com/2011/03/foggy-thinking-about-right-to-oblivion.html) Imagine a teenager regrets posting a picture of herself with a bottle of beer and, after deleting it, later discovers that several of her friends have copied and reposted the picture on their own profiles. If she asks them to take down the pictures, and her friends refuse or can’t be found, should Facebook be forced to delete the picture from her friends’ albums without the owners’ consent? According to the proposed European right to be forgotten, the answer is almost certainly yes. If contacted by someone who regrets posting an embarrassing picture, Facebook must take “all reasonable steps” on its own to identify any relevant third parties and secure the takedown of the content. The regulation does create an exemption for “[the processing of personal data solely for journalistic purposes, or for the purposes of artistic or literary expression.](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf)” But this essentially puts the burden on Facebook to prove that an embarrassing picture is a legitimate journalistic (or literary or artistic) exercise. At the very least, Facebook will have to engage in the kinds of difficult line-drawing exercises previously performed by courts. And the prospect of ruinous monetary sanctions for any data controller that does not comply—[a fine up to 1,000,000 euros](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf) or up to two percent of Facebook’s annual worldwide income—might lead data controllers to opt for deletion in even ambiguous cases.