

# THE RIGHT TO BE FORGOTTEN

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## ABSTRACT

The right to be forgotten gained international attention in May 2014, when the European Court of Justice ruled that Google was obligated to recognize European citizens' data protection rights to address inadequate, irrelevant, or excessive personal information. As of April 14, 2015, Google received 239,337 requests to eliminate 867,930 URLs from search results and has removed 305,095 URLs, a rate of 41.5 percent. The right to be forgotten is intended to legally address digital information that lingers and threatens to shackle individuals to their past by exposing the information to opaque data processing and online judgment. There are a number of challenges to developing these rights – digital information means and touches so many aspects of life across cultures as they grapple with new policies. The controversial ruling and establishment of such a right, potential for a similar movement in the U.S., and future of transborder data flows will be discussed by this esteemed panel.

## Keywords

Information ethics & information policy, information retrieval & search engines, digital privacy, international policy.

## INTRODUCTION

Computational data collection, processing, sharing, trading, and use have placed new strains on concepts and values surrounding information privacy. Individuals in information societies carry devices used to connect and share extraordinary amounts of personal information. These devices and the devices of others create data about

individuals as they move through physical, virtual, and networked environments. The implications of the accessibility and use of this personal information are far reaching, potentially powerful, and uncertain.

The perfect and permanent nature of digital data was thoroughly examined by Viktor Mayer-Schönberger in 2009 book *Delete* [1]. He argued that information societies have moved from a world where forgetting was the default – a good default – and remembering the challenge to a world where perfect memory is easy and important forms of forgetting are difficult [1]. Although Mayer-Schönberger discouraged reliance on law to shift us back to a default of forgetting, the right to be forgotten was placed firmly on the political agenda shortly after.

## THE RIGHT TO BE FORGOTTEN

The right to be forgotten is a legal concept that obligates others to obscure or delete personal digital information about another upon request of the data subject. Incorporating and developing such a right was explicitly stated as a goal of the European Commission when it declared intentions to update the 1995 European Union Data Protection Directive with the Data Protection Regulation, which would harmonize many of the national differences that had evolved under the Directive [2]. The right to be forgotten was encoded in Article 17 of the 2012 draft Regulation and has since been retitled “the right to erasure” [3]. The language of the right and its exceptions are vague and involve a great deal of uncertainty for those that must comply with and enforce information rights [3]. Negotiations between European Parliament and the European Commission are forthcoming and agreement is expected in early 2016 [4].

## GOOGLE V. SPAIN

As controversial as the addition of a right to be forgotten was to the proposed Regulation, the issue took on a new level of public awareness in May 2014, when the Court of Justice of the European Union (CJEU) handed down an opinion that altered information practices around the world [5]. The case was referred to the CJEU by the Spanish court system struggling with whether the 1995 Directive provided a right to European Union citizens that would force search engines to remove links to certain personal information [5]. The CJEU determined that Google's search engine meets the standard of a data controller, because it determines the purpose and means of processing personal data by finding, indexing, temporarily storing, and making available web content [5]. Google must, therefore, comply with the Directive, including meet obligations related to objections to the processing of personal information where that information does not comply with the Directive. Personal information that is "inaccurate, inadequate, irrelevant, or excessive" for the purposes of the data collection do not comply with the Directive, and so, a data subject may request that such information be addressed [5].

As of April 20, 2015, Google has received 241,963 requests to address 877,322 URLs and removed 308,401 URLs (a rate of 41.5%) [6]. This is an exceptional amount of obscured information, but it has not prevented Americans from finding the right appealing. Shortly after the case, a survey by Software Advice found 61% of Americans want some version of a right to be forgotten, whereas 18% feel that search results are art of the public record [7].

## PANEL PROPOSAL

The proposed format for the discussion is as follows:

- Moderator gives brief introduction of panelists and discussion guidelines (5 minutes)
- Panelist position presentations (5-10 minutes each)
- Questions & answers (30 minutes)
- Summary and concluding remarks

Topics to be covered include:

- What is the right to be forgotten really about? Speech? Privacy? Data participation? Identity?
- Have information practices in the Digital Age really changed enough to warrant a right to be forgotten?
- How are conceptions of the internet and search results different in the U.S. and Europe?
- What are the difficulties in finding common ground between the two regions and achieving interoperable approaches to information disputes?
- If Americans want a some form of a right to be forgotten, how can/should that be achieved?
- What research can information science contribute to the problem beyond information policy research?

Panel discussion to end with summary of panelists' agreement and disagreement surrounding the right, recommendations for policy changes, and research agenda for the information science community.

## PANELISTS

Each panelist contributes important and unique perspectives on the many facets of the debate. Panelists will describe their related work and insights. Together, we will try to impart the important aspects of the socio-technical issue, find agreement and draw conclusions, and locate a path forward.

**Meg Leta Jones**, JD, PhD, is an assistant professor in Georgetown University's Communication, Culture & Technology department where she researches and teaches in the area of technology law and policy. Her research interests cover a wide range of technology policy issues including comparative censorship and privacy law, engineering design and ethics, legal history of technology, robotics law and policy, and the governance of emerging technologies. Prof. Jones received her B.A. and J.D. from the University of Illinois and her Ph.D. from the University of Colorado, Engineering & Applied Science, Technology, Media & Society. Contribution: comparative work on the right to be forgotten.

**Elisabeth A. Jones**, PhD, is a Postdoc/Lecturer at the University of Washington Information School and a Research Associate at the University of Michigan Libraries. My primary research interests include the social dynamics of digital information transitions, the future of scholarly communication, and information policy. Contribution: work on information access, organization, and historical context.

**Jill Dupre**, JD, is the Associate Director of the ATLAS Institute at the University of Colorado. She has a joint appointment with the Interdisciplinary Telecommunications Program and the ATLAS Institute. Jill is a graduate of the University of Colorado School of Law, and a member of the Colorado Bar Association. Prior to working at ATLAS, she was a Research Fellow at the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado School of Law. Contribution: work on forgiveness and the right to be forgotten.

**Jens-Erik Mai**, PhD, is professor at the University of Copenhagen, Royal School of Library and Information Science in Denmark. Jens-Erik studies basic questions about the nature of information phenomena in contemporary society; he is concerned with state of privacy and surveillance given new digital media, with classification given the pluralistic nature of meaning and society, and with information and its quality given its pragmatic nature. His publications include conceptual constructions as well as methodological and programmatic papers that have helped forward thinking about the organization of information. Contribution: work on individual representation and misinformation.

**Elana Zeide**, JD is a Privacy Research Fellow at New York University's Information Law Institute, a member of its Privacy Research Group, an Affiliate of the Data & Society research center, and a member of the Future of Privacy Forum's Advisory Board. Elana examines the law, policies, and cultural norms governing information in the context of technological innovation. She currently focuses on student privacy and information flow in education. Contribution: work on permanent records in education.

**Neil Richards**, JD, is an internationally-recognized expert in the fields of privacy, First Amendment, and information law. His recent work explores the complex relationships between free speech and privacy in cyberspace. Professor Richards also co-directs both the Washington University-Cambridge University International Privacy Law Conference and the Washington University Free Speech Conference. Contribution: work on commercial speech and the right to be forgotten.

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