

A CRITICAL STUDY OF RIGHT TO BE FORGOTTEN

Dr. Harish Kumar Sharma,

Associate Professor, Deptt. Of Law, D. S. College, Aligarh

Email Id- harishdcollege@gmail.com

ABSTRACT

The Internet has grown in popularity in recent years. People began to distribute information, including personal information, all across the World Wide Web as a result of its popularity. People began suing search engine operators to have the connections to their information removed after understanding that information could not be readily removed from the Internet. The "right to be forgotten" was created by the European Court of Justice and permits persons to request that their information be removed from search engines. The right, on the other hand, has the capacity to ban the Internet and is still open to interpretation in many ways. A new age of resource-intensive deletion requests and lawsuits begun for search engine owners. This study delves into the origins of the "right to be forgotten," its contentious nature, and the potential future of search engines. The author intends to see how Google uses the rule in practice in a pilot project.

Keywords: *Google, lawsuit, right to be forgotten*

1. INTRODUCTION

The information on the World Wide Web has risen dramatically as the Internet has grown in popularity and user base over the previous two decades. This content's subjects are diverse and encompass practically every field imaginable. With the rise in popularity of social media, the content got increasingly personal. In December 2009, 73 percent of all adults in the United States reported regularly accessing the Internet (Lenhart et al, 2010). People began to post personal photos, texts, and videos on the Internet. After some time had passed, they realised that they didn't want the entire world to have access to their private files and texts on the Internet. They also discovered that deleting something from the Internet is difficult. People began to do self-search on search engines such as Google and were astounded by the results. They discovered knowledge about themselves that was years old. People began to call and sue search engine providers in order to have specific search results deleted since they did not want someone to uncover this perhaps sensitive information about themselves in search engines. Google received approximately 91,000

takedown requests for more than 328,000 URLs between January 10th and July 14th, 2014. (Zeckman, 2014). The author will provide the reader an outline of previous cases against search engines and their outcomes in this paper.

2. CASE OF MARIO COSTEJA GONZALEZ

Mario Costeja González is a lawyer from Spain. When someone searched for his name on the Internet, Google returned results that included a newspaper article from 1998 about him, hinting that González was experiencing financial difficulties at the time. González requested that Google remove these search results in 2010 since his debts were paid off and the newspaper article including sensitive information could jeopardise his recovery. González contacted the Spanish supervisory authority for data protection (DPA). They joined together to file a lawsuit against the corporation (Kulk et al, 2014). González's challenge was, and continues to be, very current and important in today's digitalized society. On a daily basis, millions of individuals use the Internet, and "every photo, status update, and tweet lives eternally in the cloud" (Rosen, 2012). "Viviane Reding, the European Commissioner for Justice, Fundamental Rights, and Citizenship, revealed the European Commission's proposal to introduce a sweeping new privacy right - the "right to be forgotten" – at the end of January 2012." (Rosen, 2012; Rosen, 2012; Rosen, 2012; Rosen, 2012; Rosen, 2012 "a) On the territoriality of EU rules: Even if a company's physical server is located outside Europe, EU rules apply to search engine operators if they have a branch or a subsidiary in a Member State that promotes the selling of advertising space offered by the search engine;

b) On the applicability of EU data protection rules to a search engine: Search engines are controllers of personal data," the court said in January 2014. By claiming to be a search engine, Google cannot avoid its responsibilities under European law when it comes to processing personal data. The "right to be forgotten" and EU data protection rules are both applicable.

c) When it comes to the "right to be forgotten," Individuals have the right to request that search engines erase links containing personal information about them if certain conditions are met. This is true when the information used for data processing is erroneous, insufficient, irrelevant, or excessive (para 93 of the ruling). The court ruled that in this case, the interference with a person's right to privacy could not be justified only on the

basis of the search engine's economic interests" (Press and Information, 2014). The "right to be forgotten," as defined in paragraph c, is the subject of the following study. It hasn't changed since the original proposal in 2012, thus the references are still relevant.

3. THE RIGHT TO BE FOGOTTEN

The court ruled that people have the right to have search results for their identity removed under certain circumstances. Even if the material was published legally (Kulk et al, 2014). The foundation for this rule was already in place in Europe, and it was known in France as the "right of oblivion" (Rosen, 2012), and it was intended for criminal records. It was aimed at criminals who have changed their personalities after completing their term. Everyone should be given the opportunity to rehabilitate and reintegrate into society. Everyone deserves a second opportunity, and no one should be burdened by their past for the remainder of their lives (De Terwangne, 2012). This right has received a lot of attention, and it was thought that it needed to be expanded to accommodate the new Internet environment. It was then adapted and renamed the "right to be forgotten." This means that references to private information in search engine results on the Internet must also be able to be erased if the person wishes. Although the breadth of the "right to be forgotten" has yet to be fully defined, and its applicability to all sorts of material on the Internet has yet to be fully addressed (Fazlioglu, 2013). The "right to be forgotten" is now open to interpretation because it lacks clear criteria for:

- What constitutes personal data?
- Who has the authority to ask for the deletion of a certain data item?
- What methods of enforcing the right are acceptable? T

The courts must apply the law to specific cases and, as time goes on, expand the case law as they gain more expertise (European Network and Information Security Agency, 2012).

3.1 What is Personal Data?

According to the General Data Protection Regulation, an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or any other natural or legal person, including by reference to an identification number, location data, on-line identifier, or other similar identifier is defined as follows:

1. "Data subject" means a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or any other natural or legal person, in particular by reference to an identification of that person.

personal data means any information that can be associated with a data subject;" According to the European Union Commission (2012), As defined by these definitions (which define personal data very broadly), "personal information" is any information that can be "connected, either by itself or in combination with other available information, in order to uniquely identify a natural person" (European Network and Information Security Agency, 2012). They provide opportunity for interpretation, regardless of whether the information can be used to identify a person absolutely or with a high degree of certainty, such as a photograph or an account of a person's past. Furthermore, it is unclear how information about small groups of individuals, such as a family, should be treated when the information does not identify a person in a unique way (European Network and Information Security Agency, 2012).

3.2 FREEDOM OF SPEECH VS RIGHT TO BE FORGOTTEN

The court's judgment has sparked a great deal of debate around the world. On the other hand, some people are opposed to the new regulation because search engines are designed to find information on the Internet. If you erase material from the search engine results pages, you have the option of filtering it in some way (Bernal, 2011).

If social media companies such as Facebook and Google fail to remove images of people who publish about themselves and later regret it, they could be responsible for up to two percent of their global revenue, according to Rosen (2012). When it is published over the following year, the right will need to be articulated with greater specificity. The law has the potential to create a significant divide between European and American interpretations of what constitutes an appropriate balance between privacy and free expression, resulting in a far less open Internet. In spite of the fact that Reding [the European Commissioner for Justice] portrayed the new right as a small expansion of current data privacy rights, in reality it represents the single greatest threat to free expression on the Internet in the future decade" (Rosen, 2012). In order to mitigate this threat, the right must be more detailed and precise on the topic of when people's requests for the deletion of specific links must be carried out by the search engines themselves. Besides one's own characteristics, one's

personality is influenced by the perceptions of others about that individual. Thus, when someone wishes to delete information about him from the Internet, he or she must also "take into account the interests that others (as a collective) may have in keeping the information available and the corresponding identity traces 'alive,'" according to the Internet Archive's definition (De Andrade, 2012).

3.3 Who is allowed to request deletion?

"A recent ruling by the Court of Justice of the European Union (C-131/12, 13 May 2014) found that certain people can ask search engines to remove specific results for queries that include their name, where the interests in those results appearing outweigh the person's privacy rights," according to the Google website for legal assistance (Google, 2014).

As a result, in circumstances when people can be identified by their names, dates of birth, or other identifying characteristics, the deletion should not pose an issue. However, there are numerous additional instances in which it is difficult to determine who has the authority to demand that certain material be removed. It is then up to the individual to determine whether the item will be forgotten or not. One illustration of these types of problematic situations would be a situation in which two people are tagged in the same photo. Person A want for the picture to be removed from the Internet, whilst person B wishes for it to remain on the Internet. What if there are even more people in the photo than that? In 2012, the European Network and Information Security Agency (ENISA) asked who had the authority to decide whether a photograph should be erased or not. All of these concerns have yet to be answered, and it is unclear whether or not they will ever be codified into legislation or whether they will continue to be a matter of interpretation indefinitely.

4. PILOT STUDY

During the course of his research, the author of this paper conducted a pilot study to determine how Google applied the court's ruling on the "right to be forgotten" in order to better understand the situation. In order to initiate a request for the deletion of personal information from the search results page, the author must complete a form that includes the name of the person who is being searched for, the name of the person who is requesting the removal, and an email address with which to communicate. After providing Google with all of the necessary information, it is necessary to identify the URLs that should be

removed from the search engine's results page. The author chose an old essay that had been published by a high school in the past. Aside from that, the person who wishes to have a link erased by Google must specify why and how the link is associated with the individual. One of the following reasons can be used to support your position:

- Search result is irrelevant
- Out dated
- Otherwise objectionable

Google specifically warns the user that the request will be unable to be executed unless these details are provided. As a last stage, Google requires a document that clearly identifies the person who submitted the information, such as a passport. After the signature at the conclusion of the site has been submitted, a notification email will be sent to the email address that was previously registered on the website.

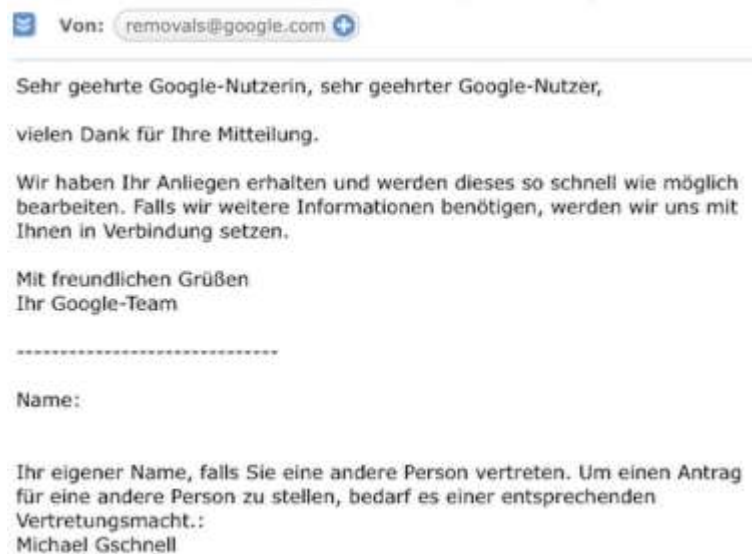


Fig 1 An email confirmation from Google sent to the user after he or she requests that their data be deleted.

In accordance with Figure 1, the author submitted his request on September 30, 2014.

"...we have received your request and will respond to you as soon as possible..." says the message in the email.

Google has not responded to the author's request for comment at this time.

5. CONCLUSION

It was decided in May 2014 by the European Court of Justice that the 2012 proposal in the case of Mario Costeja González will be implemented, and with it will be implemented the "right to be forgotten." Every individual will now have the ability to request that their personal information be removed from search engine result pages as of today. The court's judgement raises a slew of issues and challenges for the future, because many aspects of the "right to be forgotten" are still up in the air as to how they should be interpreted. However, this new privilege must be exercised with extreme caution because it has the potential to censor the Internet if it is not carefully stated who has the authority to request that the request be deleted. A significant amount of work and resources are required by search engine operators in this new period in order to not only deal with the vast amounts of deletion requests that will be received in the coming years, but also to avoid being sued repeatedly.

REFERENCES

- Bernal, 2011. A Right to Delete? European Journal of Law and Technology, Vol. 2, No.2.
- Cumbley R. & Van Overstraeten T. 2014. Europe creates a "right to be forgotten". Linklatters LLP.
- De Andrade, 2012. Revista de los Estudios de Derecho y Ciencia Política de la UOC. De Terwangne, 2012. Internet Privacy and the Right to be Forgotten/Right to Oblivion. Revista de los Estudios de Derecho y Ciencia Política de la UOC.
- Dixon, P. & Gellman, R. 2014. Decision in Europe: Controversial Revival of Practical Obscurity/Implications of the Google Spain Case. http://www.worldprivacyforum.org/wpcontent/uploads/2014/05/WPF_GoogleSpain_CaseAnalysis_fs.pdf [October 17th 2014].
- European Commission, 2012. Regulation of the European parliament and of the council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation),