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# Is it a Human Right to be Forgotten? Conceptualizing the World View

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# **Is It a Human Right To Be Forgotten? Conceptualizing The World View**

Andrew Neville\*

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**Abstract:**

*The world has fully emerged into the digital age of the Internet, which rarely forgets. As a result of this transition, citizens around the globe have found their current lives and past becoming less private by the day. The European Court of Justice (“ECJ”), through a landmark ruling, created a new standard allowing European citizens to request a delinking of their name from specific links in results provided by search engines. This idea of a “right to be forgotten” has slowly begun to spread across the globe and this paper raises the question of whether it is a human right. While it is my conclusion in this paper that the “right to be forgotten” is a human right due to rights of privacy and reputation, it is an ongoing global discussion that is ever-evolving.*

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**I. INTRODUCTION**

Philosopher John Locke once entered in his journal, “[t]he principal spring from which actions of men take their rise, the rule they conduct them by, and the end to which they direct them, seems to be credit and reputation . . . .”<sup>1</sup> With the advent of the Internet, information is so readily available and permanent, allowing an enduring stigmatization of someone’s reputation.<sup>2</sup> Considering that anyone in the world can simply input a person’s name into an Internet search engine and discover an infinite number of details about them, moving on from the past becomes an impossible task.<sup>3</sup> Everyone is affected: those moving on from being wronged; those moving on from a committing a past wrong; and society as a whole.

Imagine that the murder of a loved one is reported publicly, listing your name, and after years pass, these articles are found simply from an Internet search for your name. This was reality for a

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1. PETER KING, THE LIFE OF JOHN LOCKE: WITH EXTRACTS FROM HIS CORRESPONDENCE, JOURNALS AND COMMON-PLACE BOOKS 109 (1829).  
 2. Michael L. Rustad & Sanna Kulevska, *Reconceptualizing The Right To Be Forgotten To Enable Transatlantic Data Flow*, 28 HARV. J.L. & TECH. 349, 353 (2015), available at <http://jolt.law.harvard.edu/articles/pdf/v28/28HarvJLTech349.pdf>.  
 3. *Id.* at 352.

woman in England whose name produced results consisting of articles about her husband's murder and essentially erased any opportunity for her to move on.<sup>4</sup> With the implementation of the "right to be forgotten" in Europe, this woman's plight was put to rest.<sup>5</sup> Throughout the twenty-eight member states of the European Union ("EU"), citizens may now submit requests to Google and other search engines to delink<sup>6</sup> their association with certain URLs.<sup>7</sup> This has sparked worldwide debate as to how the right to be forgotten should be applied in an international setting. The United Nations Educational, Scientific and Cultural Organization ("UNESCO") recently stated, "[i]nternational human rights law does not provide for such a 'right' . . . [and] the issue has become topical . . . because in the digital age, it may be impossible for past wrongs to be forgotten, given the ability for people to find a post, comment, picture, or record about someone wherever they may work or reside."<sup>8</sup> However, UNESCO disregards Article 12 of the Universal Declaration of Human Rights ("UDHR"), which states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."<sup>9</sup>

To date, the "right to be forgotten" deals solely with privacy and reputation issues of those involved. Thus, a question is raised in our technological age as to whether there is a human right to be forgotten.

This paper discusses the evolution of the "right to be forgotten" and addresses the question, "Is it a *human right* to be forgotten?" Part II of this paper reviews the European Data Protection Directive of 1995 and the pivotal European Court of Justice decision, which set a new precedent ultimately creating the right to be forgotten. Part III discusses current international developments and case law dealing with the right to be forgotten. Part IV analyzes the differing views presented. Finally, Part V concludes on whether or not it is a human right to be forgotten.

## II. EUROPEAN INVENTION OF A RIGHT TO BE FORGOTTEN

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4. Lance Whitney, *Google Hit by More than 144,000 'Right to be Forgotten' Requests*, CNET.COM (Oct. 10, 2014), <http://www.cnet.com/uk/news/google-hit-by-more-than-144000-right-to-be-forgotten-requests/>.

5. *Id.*

6. The term "delink" will purposely be emphasized throughout this paper to properly represent what happens when a request is approved by Google. Most legislation and media reports have used terms such as removed, deleted, and forgotten, which have warped how people originally perceive the idea of the right to be forgotten.

7. *Factsheet on the "Right to be Forgotten" Ruling (C-131/12)*, EUROPEAN COMMISSION, [http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet\\_data\\_protection\\_en.pdf](http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_en.pdf).

8. UNESCO, KEYSTONES TO FOSTER INCLUSIVE KNOWLEDGE SOCIETIES: ACCESS TO INFORMATION AND KNOWLEDGE, FREEDOM OF EXPRESSION, PRIVACY AND ETHICS ON A GLOBAL INTERNET 44 (2015), *available at* <http://unesdoc.unesco.org/images/0023/002325/232563E.pdf>.

9. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), *available at* <http://www.un-documents.net/a3r217a.htm>.

The initial creation and subsequent international advances of the right to be forgotten began in the European Union (“EU”) and its Data Protection Directive of 1995 (“Directive”).<sup>10</sup> The Directive requires all EU Member States to “legislate to ensure that personal data are processed fairly and lawfully.”<sup>11</sup> One objective of the Directive is to protect the privacy rights of EU citizens while also ensuring that the availability of information is not obstructed.<sup>12</sup>

### A. *Google Spain v. AEPD*<sup>13</sup>

The right to be forgotten emerged in May 2014 from the European Court of Justice’s (“ECJ”) groundbreaking decision in *Google Spain SL v. Agencia Española de Protección de Datos and Mario Costeja González*.<sup>14</sup> In the case, a Spanish lawyer, González, argued that articles hosted on the Internet relating to the repossession and auction of his home following attachment proceedings for the recovery of social security debts, were irrelevant to his reputation and thus not pertinent to public knowledge, since the issue had been resolved for over a decade.<sup>15</sup> The articles appeared in the Google results in a search for González. In his original complaint, he sought to have La Vanguardia Ediciones SL, a daily newspaper with a larger circulation, remove or amend the information hosted on their website and to have Google “remove or conceal the personal data” so that the newspaper articles would no longer appear with a mere search of his name.<sup>16</sup> The Court found Google, and search engines in general, to be “controllers” in regards to the “processing of data.”<sup>17</sup> The Court held:

[I]f it is found, following a request by the data subject . . . that the inclusion in the list of results displayed following a search made on the basis of his name of the links to web pages published lawfully by third parties and containing true information relating to him personally is, at this point in time, incompatible with Article 6(1)(c) to (e) of the directive because that information appears, having regard to all the circumstances of the case, to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out

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10. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data, 1995 O.J. (L 281/31), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31995L0046&from=en>.

11. *Id.* at 10.

12. C-131/12, *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* 2014 E.C.R. 317 § 1, available at [http://curia.europa.eu/juris/document/document\\_print.jsf?doclang=EN&text=&pageIndex=0&docid=152065&cid=1078609#Footnote\\*](http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&docid=152065&cid=1078609#Footnote*).

13. *Id.*

14. *Id.* at § 91.

15. *Id.* at § 14.

16. *Id.*

17. *Id.* Controllers are defined as “natural or legal person[s], public authority, agency, or any other body which . . . determines the purposes and means of the processing of personal data.” Processing of data refers to “any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.”

by the operator of the search engine, the information and links concerned in the list of results must be erased.<sup>18</sup>

The decision in *González* called for a case-by-case assessment when considering whether to remove information about a data subject,<sup>19</sup> and the Court “explicitly clarified that the right to be forgotten is not absolute but will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media.”<sup>20</sup> Although Google was ordered to delink the news articles from search results for González, it did not order the newspaper to change or delete anything, thus drawing a bright line between privacy rights and freedom of expression.<sup>21</sup> What remained after the decision was a new precedent set for privacy rights in the EU: the right to be forgotten.

### III. INTERNATIONAL VIEWS

The decision in *González* created an international discussion and new issues emerged in privacy litigation. Some believe the ECJ never properly established the reach of the new regulation,<sup>22</sup> while others see it as the beginning of a new area of human rights.<sup>23</sup>

#### A. Europe

##### 1. Application of the right to be forgotten

Since the ECJ ordered Google to begin accepting delink requests from European citizens, Google has received over 340,000 requests regarding over 1.2 millions URLs.<sup>24</sup> Of these requests, Google has approved only 41.9% for removal, approximately 430,000 URLs.<sup>25</sup> Initially, Google assesses the URLs individually to decide whether the information is inadequate, irrelevant, no longer relevant, or excessive, the standard laid out by the ECJ in *González*.<sup>26</sup> Google holds issues involving financial scams, professional malpractice, criminal convictions, and public conduct of government officials to

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18. *Id.*

19. EU Directive, *supra* note 11. The terms “data subject” refers to an identified or identifiable person about which specific data relates.

20. *Factsheet, supra* note 7.

21. *Id.* The newspaper articles remained unchanged and still appeared in search results, but did not appear while searching for González.

22. Eleni Frantziou, *Further Developments in the Right to be Forgotten: The European Court of Justice’s Judgment in Case C-131/12, Google Spain SL, Google Inc. v Agencia Española de Protección de Datos*, HUM. RTS. L. REV. 5 (2014).

23. Simon Mundy, *Asia Considers ‘Right to be Forgotten’ Ruling Prompted by Google*, THE FINANCIAL TIMES, (Mar. 12, 2015), available at <http://www.ft.com/intl/cms/s/0/ade889d4-bc0e-11e4-a6d7-00144feab7de.html>.

24. Google Transparency Report, *European Privacy Requests for Search Removals*, GOOGLE, <https://www.google.com/transparencyreport/removals/europeprivacy/?hl=en> (last visited Nov. 11, 2015).

25. *Id.*

26. Google Transparency Report, *Frequently Asked Questions*, GOOGLE, [https://www.google.com/transparencyreport/removals/europeprivacy/faq/?hl=en#how\\_do\\_you\\_decide](https://www.google.com/transparencyreport/removals/europeprivacy/faq/?hl=en#how_do_you_decide) (last visited Nov. 12, 2015).

be of high public interest.<sup>27</sup> As a system of checks and balances, if a data subject's request is denied by Google or another search engine, the user has the right to lodge a complaint with their data protection authority or the competent judicial authority of their respective state.<sup>28</sup> Each European Union country has its own data protection agency that is guided by a set of data protection rules set out by the European Commission in 2012.<sup>29</sup>

In an act of transparency, Google revealed some of the decisions it made including approval for delinking, denial of delinking and in some cases a hybrid decision.<sup>30</sup> For instance, an individual in Belgium convicted of a serious crime, which was later overturned on appeal, requested that Google delink his name from an article about the incident, which Google approved.<sup>31</sup> In contrast, Google denied the request of a priest in France convicted for possession of child sexual abuse imagery after he requested to be delinked from articles reporting on his sentence and banishment from the church.<sup>32</sup> In another example from the United Kingdom, a doctor requested to be delinked from over fifty URLs to articles about a botched procedure.<sup>33</sup> In a hybrid decision, Google approved the request for 3 of the URLs, due to the presence of personal information but no pertinent information pertaining to the procedure, and left the remainder of the URLs linked that contained information on the procedure.<sup>34</sup>

## 2. Issues

The application of the right to be forgotten within the EU has not been without issues. For instance, in lodging a complaint, a data subject may inadvertently cause more links to appear when searching his or her name. This occurred to a data subject in the United Kingdom after he requested that Google delink him from a URL that reported his outdated conviction.<sup>35</sup> In response, Google approved the removal and also informed the owner of the website where the article was hosted.<sup>36</sup> Subsequently, the website "published an article about Google Inc.'s removal of the link, including details about the content of the original story about the complainant's convictions," which then led to the publishing of even more articles by other media outlets.<sup>37</sup>

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27. *Id.*

28. Graeme Burton, *France Orders Google to Apply EU 'Right to be Forgotten' Globally – or Face Action*, COMPUTING (June 12, 2015), <http://www.computing.co.uk/ctg/news/2412884/france-orders-google-to-apply-eu-right-to-be-forgotten-globally-or-face-action> (last visited Mar. 4, 2017).

29. European Commission Press Release, *Commission Proposes a Comprehensive Reform of Data Protection Rules to Increase Users' Control of Their Data and to Cut Costs for Businesses*, EUROPEAN COMMISSION (Jan. 25, 2012), [http://europa.eu/rapid/press-release\\_IP-12-46\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-46_en.htm?locale=en).

30. *European Privacy Requests*, *supra* note 24.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. INFORMATION COMMISSIONER'S OFFICE, DATA PROTECTION ACT OF 1998 SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER ENFORCEMENT NOTICE (2015).

36. *Id.* at ¶ 14.

37. *Id.* at ¶ 15.

Upon discovering those new articles, the data subject had to then request that Google delink him from them which Google promptly denied, arguing that “the article linked to concerned one of its decisions to delist a search result and as such formed an essential part of a recent news story relating to a matter of significant public importance.”<sup>38</sup> This left the man with one option, to file a complaint with the Information Commissioner’s Office (“ICO”) of the United Kingdom. The Commissioner considered several factors in his decision: whether a public figure was involved, whether sensitive personal data was involved, passage of time, prejudice to the data subject, journalistic content, and the type of criminal offence. While weighing these factors, the Commissioner agreed that the issue of delinking was newsworthy and in the public interest, but that the public interest could be “properly met without a search made on the basis of the complainant’s name providing links to articles which reveal information about the complainant’s spent conviction.”<sup>39</sup> The personal information revealed in the articles was found to: 1) be excessive in relation to its purpose; 2) have a disproportionately negative impact on the complainant’s privacy; and 3) likely to cause the complainant distress.<sup>40</sup> After considering the above factors, the ICO ordered Google to delink the data subject from the new articles.

A secondary issue that has arisen is how far the reach of the ECJ’s ruling extends. Although Google began complying with *González’s* right to be forgotten order, the search engine giant has only been delinking URLs on its European extensions.<sup>41</sup> Thus, a data subject in Germany could have a request approved which would be delinked on all European extensions, but still show in results on American and other non-European Google extensions. This leaves a door open for Europeans to still search for a specific person and discover delinked information as anyone can access the American version of Google by simply typing in the proper URL in the browser. Various countries have specific URLs to access Google, such as “.com” in America, “.fr” in France, and “.ie” in Ireland. All of these country-specific extensions are accessible across the globe.

In June 2015, the Commission Nationale de L’Informatique et der Libertés<sup>42</sup> (“CNIL”), France’s data privacy regulatory body, put Google on notice that it must begin delinking approved requests from all extensions of the company’s website.<sup>43</sup> CNIL considers Google’s search service to be “a single pro-

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38. *Id.* at ¶ 19.

39. *Id.* at ¶ 27.

40. *Id.* at ¶ 29–30.

41. A website extension refers to what text comes at the end (e.g., “.com,” “.ie,” “.co.uk,” “.fr,” etc.) and relates to the website location.

42. See Informing and Educating, CNIL, available at <https://www.cnil.fr/en/cnils-missions>. (“The CNIL has the general mission of informing individuals of their rights accorded to them by the French Data Protection Act. The CNIL responds to requests made by individuals and companies alike. In 2013, it received almost 125,000 telephone requests for advice or further information. The CNIL leads awareness campaigns targeting the general public by means of the press, its website, social networks and target workshops. While being directly requested for leading training programmes on the Data Protection Act within many organisations, companies, or institutions, the CNIL participates also in conferences, seminars, and workshops in order to inform and be informed. It brings together a collective of over 60 organisations that lead campaigns in favour of education on the digital world.”).

43. *CNIL Orders Google to Apply Delisting on All Domain Names of the Search Engine*, CNIL (June 12, 2015), <https://www.cnil.fr/fr/node/15790>.



cessing<sup>44</sup> and argued that “to be effective, [delinking] must be carried out on all extensions of the search engine.”<sup>45</sup> At the time of the notice, Google was given fifteen days to comply or face penalties including a one-time fine of up to 300,000 euros.<sup>46</sup> Marc Rotenberg, president of the Electronic Privacy Information Center,<sup>47</sup> does not feel Google’s position to only delink URLs on European extensions makes any sense.<sup>48</sup> He stated that well before the *González* ruling, Google accepted requests in the United States to remove extremely personal information such as stolen credit card numbers and bank account records.<sup>49</sup> If a delinking was approved, Google would delink the information on all extensions, not just those in the U.S.<sup>50</sup> This behavior set forth a corporate standard regarding how Google operates itself as a company. Thus, Rotenberg argued, if a European data subject has information delinked, it should not simply apply to European extensions but to all Google extensions.<sup>51</sup>

Google decided not to conform with CNIL’s notice and instead filed an informal appeal in July 2015, asking the CNIL to rescind its public formal notice.<sup>52</sup> Their appeal argued that this action would impede the public’s access to information and would also be a form of censorship.<sup>53</sup> Google protested that no one country should control what secondary countries can view on their search engine, and that it would be disproportionate and unnecessary to apply the delinking to Google.com since 97% of French citizens use a European version of Google, namely Google.fr.<sup>54</sup> What this position omits, is that if a data subject searches on a European extension of Google and the results omit URLs, the results page informs the user that “some results may have been removed under data protection laws in Europe,” practically instructing them to visit Google’s “.com” page.

Google’s appeal was denied and it was granted until May 2016 to remove thousands of delistings from non-European domains with the overhanging threat of a fine and sanctions from CNIL.<sup>55</sup> Before that deadline, Google attempted a compromise by blocking delinked URLs from appearing in search

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44. *Id.* A “single processing” refers to Google as the controller of all the data being processed at one time across all of their website extensions.

45. *Id.*

46. Mark Scott, *France Wants Google to Apply ‘Right to Be Forgotten’ Ruling Worldwide or Face Penalties*, NY TIMES (June 12, 2015), available at [http://bits.blogs.nytimes.com/2015/06/12/french-regulator-wants-google-to-apply-right-to-be-forgotten-ruling-worldwide/?\\_r=0](http://bits.blogs.nytimes.com/2015/06/12/french-regulator-wants-google-to-apply-right-to-be-forgotten-ruling-worldwide/?_r=0).

47. The Electronic Privacy Information Center is a non-profit research center based in the United States whose focus is on emerging privacy and civil liberties issues.

48. Marc Rotenberg, *Google’s Position Makes No Sense: Opposing View*, USA TODAY (Jan. 22, 2015), available at <http://www.usatoday.com/story/opinion/2015/01/22/google-eu-electronic-privacy-information-center-editorials-debates/22186841/>.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Right to Delisting: Google Informal Appeal Rejected*, CNIL (Sept. 21, 2015), <http://www.cnil.fr/english/news-and-events/news/article/right-to-delisting-google-informal-appeal-rejected/>.

53. *Id.*

54. *Implementing a European, Not Global, Right to be Forgotten*, GOOGLE EUROPE BLOG (July 30, 2015), <https://europe.googleblog.com/2015/07/implementing-european-not-global-right.html>.

55. Addleshaw Goddard LLP, *Google’s Appeal Against the Global Enforcement of “Right to be Forgotten” Removals Has Been Rejected by the French Data Regulators*, LEXOLOGY, (Oct. 15, 2015), <http://www.lexology.com/library/detail.aspx?g=1cea0b6d-5615-4b48-8045-09897bbcc36>.

results across all of its domains when a data subject searches within any European country.<sup>56</sup> In March 2016, Google's compromise was found to be insufficient by CNIL, who then issued a fine of \$112,000 for violating the CNIL order.<sup>57</sup> Since being fined by CNIL, Google has appealed to France's highest court, the Conseil d'État, which has final say over matters of administrative law.<sup>58</sup> As of the date of this writing, the Conseil d'État has not made its decision, however when it does, the decision will likely help mold the scope of the European right as applied globally.

## **B. Asia**

Once the *González* decision created the right to be forgotten, other citizens across the globe began bringing claims against Google. Japan has been particularly active in resolving issues regarding the right to be forgotten.

The Courts of Japan have yet to reach an agreement on the proper balance of privacy and freedom of expression, leaving claims to be decided on a case-by-case basis. In September 2014, a data subject sought to have his arrest record removed from search results of his name.<sup>59</sup> The case was dismissed for lack of legal grounds, and the judges agreed it was not the responsibility of Google Japan to manage or supervise search results.<sup>60</sup>

In October 2014, a Tokyo District Court ordered Google to "remove the titles and snippets to websites revealing the name of a man who claimed his privacy rights were violated due to articles hinting at past criminal activity."<sup>61</sup> The URLs involved referenced events that had occurred over ten years prior.<sup>62</sup> The Court stated that the man suffered "actual harm," and that Google would not suffer "an unjust disadvantage even if it is obliged to remove the search results."<sup>63</sup>

Yet, as recent as June 2015, the Saitama District Court ordered Google to remove Internet search results of a man's arrest record for child prostitution and pornography.<sup>64</sup> There, the man claimed

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56. Samuel Gibbs, *Google to Extend 'Right to be Forgotten' to all its Domains Accessed in EU*, THE GUARDIAN (Feb. 11, 2016), available at <http://www.theguardian.com/technology/2016/feb/11/google-extend-right-to-be-forgotten-googlecom>.

57. Sam Schechner, *France Fines Google Over Right to be Forgotten*, WALL STREET JOURNAL (Mar. 24, 2016), available at <https://www.wsj.com/articles/france-fines-google-over-right-to-be-forgotten-1458847256>.

58. Alex Hern, *Google Takes Right to be Forgotten Battle to France's Highest Court*, THE GUARDIAN (May 19, 2016), available at <http://www.theguardian.com/technology/2016/may/19/google-right-to-be-forgotten-fight-france-highest-court>.

59. Tomoko Otake, *'Right to be Forgotten' on the Internet Gains Traction in Japan*, JAPAN TIMES (Dec. 9, 2014), available at <http://www.japantimes.co.jp/news/2014/12/09/national/crime-legal/right-to-be-forgotten-on-the-internet-gains-traction-in-japan/#.VkenSq6rRE5>.

60. *Id.*

61. *Id.*

62. *Japanese Court Orders Google to Halt Search Harassment*, JAPAN TIMES (Oct. 10, 2014), available at <http://www.japantimes.co.jp/news/2014/10/10/national/crime-legal/tokyo-court-orders-google-remove-search-results-man/#.VI05Ka6rRE5>.

63. *Id.*

64. *Japan Court Orders Google to Remove Past Arrest Reports*, JAPAN TIMES (July 2, 2015), available at <http://www.japantimes.co.jp/news/2015/07/02/national/crime-legal/japan-court-orders-google-to-remove-past-arrest-reports/#.VkemgK6rRE5>.

"his personal rights were being infringed upon, as past news reports of his arrest appear when he searches his name and address on Google three years after his arrest . . . [which was disposed of] in a summary order."<sup>65</sup> The Saitama District Court described the crime as "relatively minor . . . [with] no historic or social significance," and held that the man's ability to rehabilitate and move on was being inhibited due to the search results connected with his name.<sup>66</sup> Google appealed the Saitama District Court's decision and, in July 2016, the Tokyo High Court rescinded the District Court's judgment.<sup>67</sup> The appeals court held that an arrest involving child prostitution is of high importance to the public and remains important even after the passage of five years.<sup>68</sup> The presiding judge stated that "the right to be forgotten is not a privilege stated in law and its prerequisites or effects are not determined."<sup>69</sup>

In a pre-emptive move, Yahoo Japan, which holds 51% of search engine usage in Japan, implemented conditions under which it would approve removal requests from data subjects.<sup>70</sup> If search results for a person's name produce results that infringe upon their rights, including details of medical history or past minor offenses, the company will delink them.<sup>71</sup> Yahoo Japan also stated that it will comply with any court orders for the removal of information about a specific person.<sup>72</sup>

South Korea has also begun to implement a legal right to be forgotten. A committee, consisting of the Korea Communications Commission ("KCC") and the Korea Internet & Security Agency ("KISA"), researched and debated the issue of whether or not it should institute a law similar to the EU's Directive.<sup>73</sup> Uhm Yul, a KCC representative, stated "The European decision is not mandatory to follow but the feeling is that Korea needs to follow the trend."<sup>74</sup> Recently, the KCC unveiled its non-binding "Guidelines on the Right to Request Access Restrictions on Personal Internet Posting" ("Guidelines") that took effect in June 2016.<sup>75</sup> Similar to the EU Directive, these guidelines allow data subjects to request the removal of URL links from search engines. The Guidelines go one step further by allow-

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65. *Id.*

66. *Id.*

67. *Tokyo High Court Overturns Man's 'Right to be Forgotten,'* JAPAN TIMES (July 13, 2016), available at <http://www.japantimes.co.jp/news/2016/07/13/national/crime-legal/tokyo-high-court-overturns-mans-right-forgotten/#.V6ar2pMrjE4>.

68. *Id.*

69. *Id.*

70. *Yahoo Japan Sets Out Procedure for Search Result Removal,* JAPAN TIMES (Mar. 31, 2015), available at <http://www.japantimes.co.jp/news/2015/03/31/national/yahoo-japan-sets-procedure-search-result-removal/#.Vkehla6rRE5>.

71. *Id.*

72. *Id.*

73. Monica Youn-Soo Chung, *Rocky Road Ahead for 'Right to be Forgotten' in Korea,* KOREA IT TIMES (July 7, 2015), available at <http://www.koreaitimes.com/story/51558/rocky-road-ahead-right-be-forgotten-korea>.

74. Mundy, *supra* note 23.

75. James Lim, *South Korea Releases Right to Be Forgotten Guidance,* BLOOMBERG BNA (July 13, 2016), <http://www.bna.com/south-korea-releases-n57982070847/>.

ing the data subject to appoint a family member who can also exercise the user's right on their behalf after the user's death.<sup>76</sup> Data has yet to show how the guidelines have and will be applied.

### **C. United States**

Currently, there are no cases in the United States that significantly relate to the European cases regarding the right to be forgotten. There are several case decisions that the media has wrongly categorized as right to be forgotten defeats, but these cases involved claims requesting content originators to physically alter or remove their articles, and brought no suit against Google for search result delinking.<sup>77</sup>

Although the U.S. does have some privacy policies in place, historically, it has placed greater emphasis on freedom of expression than on privacy.<sup>78</sup> Yet, there are still systems of forgiveness and rehabilitation within U.S. law. For instance, under the Fair Credit Reporting Act ("FCRA"), records of a person's bankruptcy are excluded from consumer reports after ten years and other financial issues are excluded after the passage of seven years.<sup>79</sup> Forgiveness extends to other issues and crimes as well. California state law erases driving under the influence ("DUI") offenses from a person's driving record after the passage of ten years.<sup>80</sup> Many states also have systems in place that allow juveniles to have their criminal records expunged, while some states even allow adult offenders to expunge certain records.<sup>81</sup>

Although Google U.S. does not currently accept requests to be delinked from specific URLs appearing in search results for someone's name, they do have a system in place to request the removal of national identification numbers, bank account number(s), credit card number(s), images of signatures, and nude or sexually explicit images that were uploaded or shared without one's consent.<sup>82</sup> With regards to other information, Google states:

Even if Google deletes the site or image from our search results, the webpage still exists and can be found through the URL to the site, social media sharing, or other search engines. This is

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76. *Id.*

77. *See G.D. v. Kenny*, 205 N.J. 275 (2011) (holding that expunged records which were once public knowledge and contained true information, may be used if tangentially involved with a public figure); *see also Martin v. Hearst Corp.*, 777 F.3d 546, 548 (2d Cir. 2015) cert. denied, 136 S. Ct. 40 (2015) (holding that a newspaper does not have to alter its records of arrests/charges simply because charges were ultimately dropped).

78. Steven Bennett, *The "Right to Be Forgotten": Reconciling EU and US Perspectives*, 30 BERKELEY J. INT'L L. 161, 169 (2012).

79. 15 U.S.C. § 1681c (a).

80. *New DUI Reportability Requirements*, CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, available at [https://www.dmv.ca.gov/portal/dmv/detail/pubs/dui/reportability!/ut/p/a0/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOK9PV1cDT3cDbzdTX0cDRy9PTz8w1zDjNwtjfULsh0VAe\\_Cq0o!/](https://www.dmv.ca.gov/portal/dmv/detail/pubs/dui/reportability!/ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOK9PV1cDT3cDbzdTX0cDRy9PTz8w1zDjNwtjfULsh0VAe_Cq0o!/).

81. Rustad & Kulevska, *supra* note 2, at 379-80.

82. *Removal Policies*, GOOGLE, <https://support.google.com/websearch/answer/2744324> (last visited Nov. 5, 2015).

why your best option is to contact the webmaster, who can remove the page entirely.<sup>83</sup>

What Google fails to inform data subjects of is the existence of many third party websites that may have also copied and published the same content. This passes the burden of removing the information onto the data subject. Once information is posted on a website, many other sites collect and republish the same information or take the information and write their own articles. This creates a situation where a data subject would need to successfully track down every site hosting the information and convince those webmasters to remove/amend the information. This is in contrast to Google simply delinking the data subject's name from being associated with those URLs if it falls within specific guidelines.

Recently, Consumer Watchdog, a nationally recognized, nonprofit, nonpartisan consumer education and advocacy organization, sent a complaint to the Federal Trade Commission ("FTC") regarding Google's failure to offer the "right to be forgotten" to U.S. users.<sup>84</sup> Consumer Watchdog's complaint alleges that Google's claims to be concerned with users' privacy rights, but failure to offer a key privacy tool (that it offers all across Europe) is a form of "deceptive behavior."<sup>85</sup> According to Consumer Watchdog, Google's experience with the right to be forgotten since the ECJ's *González* ruling demonstrates removal requests can be fairly and easily managed without harming the company.<sup>86</sup>

In response to Consumer Watchdog, the Association of National Advertisers ("ANA") submitted a counter-argument to the FTC. The ANA's argument relied on the protection of the First Amendment finding that the right to be forgotten would be a "government imposition of a pervasive regulatory regime that will impose major costs and threaten to impede the public's right to know, while threatening to erect high hurdles to the access of information in the press and elsewhere."<sup>87</sup> Yet, statistics show that 95% of all requests from European citizens came from everyday members of the public, while less than 1% of all approved requests dealt with serious crime, public figures, political figures, and child protection.<sup>88</sup> The remaining approved requests involved "private or personal information."<sup>89</sup> It is difficult to believe that the public at large has a right to know, or would even desire to know, the bulk of the information delinked. Moreover, the consideration of the negative effects on the data subject should take precedence.

#### IV. ANALYSIS

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83. *Remove Information from Google*, GOOGLE, [https://support.google.com/websearch/troubleshooter/3111061?hl=en&ref\\_topic=3285072](https://support.google.com/websearch/troubleshooter/3111061?hl=en&ref_topic=3285072) (last visited Nov. 5, 2015).
84. *Re: Complaint Regarding Google's Failure to Offer 'Right to be Forgotten' In the U.S.*, CONSUMER WATCHDOG (July 7, 2015), <http://www.consumerwatchdog.org/resources/ltrfctrbf070715.pdf>.
85. *Id.*
86. *Id.*
87. Association of National Advertisers, Response to Consumer Watchdog Complaint (July 31, 2015), available at <http://www.ana.net/getfile/22665>.
88. Sylvia Tippmann & Julia Powles, *Google Accidentally Reveals Data on 'Right to be Forgotten' Requests*, THE GUARDIAN (July 14, 2015), available at <http://www.theguardian.com/technology/2015/jul/14/google-accidentally-reveals-right-to-be-forgotten-requests>.
89. *Id.*

Article 12 of the Universal Declaration of Human Rights clearly states that there shall be no arbitrary interference with one's privacy nor shall one be subjected to attacks upon his honor and reputation while Article 19 declares a freedom of opinion and expression.<sup>90</sup> Since its inception, the Internet has had a growing impact on human rights, especially with regards to the freedom of expression and privacy.<sup>91</sup> The outlet created an expanded ability to practice one's freedom of expression.<sup>92</sup> However, this outlet's creation came at the cost of negatively affecting the ability of data subjects to protect their privacy rights.<sup>93</sup> While we live in a world where different cultures find certain rights more important than others, how can the global Internet community reach an agreement regarding the careful balancing act required to weigh both freedom of expression and privacy? Additionally, if the right to be forgotten cannot be effectively implemented across the globe, does it make for bad law?<sup>94</sup>

Honor and reputation are "core attributes of the human person and reflect the integrity of the person."<sup>95</sup> In *Melvin v. Reid*,<sup>96</sup> a landmark U.S. case on privacy, the court stated, "One of the major objectives of society as it is now constituted and of the administration of our penal system, is the rehabilitation of the fallen and reformation of the criminal."<sup>97</sup> This concept of rehabilitation has led many governments to put systems in place to allow their citizens to rehabilitate themselves in order to move onward in life. In the civil context, this is exemplified in the U.S. by the American Fair Credit Reporting Act,<sup>98</sup> which allows for certain financial issues to be excluded from consumer reports after seven to ten years.<sup>99</sup>

In 1974, the United Kingdom implemented the Rehabilitation of Offenders Act, which allows for minor criminal offenses to be cleared from a citizen's record after a specified period of time.<sup>100</sup> Similarly, Australia allows for qualifying convictions to be removed from an offender's record through various "spent conviction schemes."<sup>101</sup> The original scheme in Australia was introduced in 1990,

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90. G.A. Res. 217, *supra* note 9.

91. Shirin Ebadi, *Internet and Human Rights*, in #4 HUMAN RIGHTS AND INTERNET GOVERNANCE 13 (Wolfgang Kleinwächter et al. eds., 2012).

92. DAVID SOUTER, HUMAN RIGHTS AND THE INTERNET: A REVIEW OF PERCEPTIONS IN HUMAN RIGHTS ORGANISATIONS 8 (2012), available at [https://www.apc.org/en/system/files/HumanRightsAndTheInternet\\_20120627.pdf](https://www.apc.org/en/system/files/HumanRightsAndTheInternet_20120627.pdf).

93. *Id.*

94. Michael Douglas, *Do We Have The Right To Be Forgotten?*, 6:10 TED (2015), <http://tedxtalks.ted.com/video/Do-we-have-the-right-to-be-forg> (last visited Nov. 11, 2016).

95. JOHN SCHUYLER GIBSON, DICTIONARY OF INTERNATIONAL HUMAN RIGHTS LAW 53 (1996).

96. *Melvin v. Reid*, 112 Ca. App. 284, 285 (Dist. Ct. App. 1931).

97. *Id.* at 292.

98. 15 U.S.C. § 1681c (a)

99. *Id.*

100. UK Rehabilitation of Offenders Act of 1974, available at <http://www.legislation.gov.uk/ukpga/1974/53>.

101. Australian Human Rights Commission, Discrimination In Employment On The Basis Of Criminal Record; Article C (Dec. 2004), available at <https://www.humanrights.gov.au/human-rights-discrimination-employment-basis-criminal-record#tocC>.

with the main purpose of allowing offenders to “wipe their slate clean” after a certain amount of time had elapsed.<sup>102</sup>

Prior to any forgiveness through programs like these, the data is often included in newspapers or is available through other public sources, before eventually becoming stored on the Internet in some fashion. How can society continue to allow for the rehabilitation and protection of reputation if an Internet search for a specific name may reveal expunged facts about the individual years later, ultimately affecting their life?

The implementation of the right to be forgotten in Europe has helped data subjects “shut the door” leading to the information, through delinking, while understanding the fact that the cleared information is memorialized forever online. The right to be forgotten, as applied in Europe, upholds freedom of expression and access to information while also allowing for the protection of privacy/reputation. Some argue that technological advances create a world where society needs to learn to forgive in lieu of forget. However, forgetting is an important part of being a human being as forgetting helps us to forgive.<sup>103</sup> Outside of criminal convictions, there are times when people need to be free to move on, and to escape the traumatic and disheartening events of their past in order to create a future. A world that never forgets would destroy any opportunity to fully rehabilitate and move on.

The biggest concern with viewing the right to be forgotten as a human right is that it excessively hinders free speech and the public’s right to know. It can be argued that there is a clearly defined line between the public’s right to know and someone’s desire to know. If a government believes a person should be afforded the right to move on with their life without being hindered by the past, why then, should the Internet not do the same? The spreading of outdated and irrelevant information is equivalent to gossiping and “gossip apparently harmless, when widely and persistently circulated, is potent for evil. It both belittles and perverts.”<sup>104</sup>

The decision to name this concept the “right to be forgotten” was an unfortunate one, as this phrase has mislead some to incorrectly assume that it promotes censorship, when in actuality, it does not. Professor of Philosophy and Ethics at Oxford University, Luciano Floridi, affirms this idea, stating that he believes the entire right was “particularly misnamed.”<sup>105</sup> Without context, hearing that information is being “forgotten” can immediately lead one to incorrectly infer that information is being altered, removed, or hidden.

As it is currently being implemented, the right to be forgotten does not do any of those; the information that a data subject requests to be delinked from is not erased, but rather remains on the Internet unaltered and discoverable. Search engines are only obligated to adjust their systems so that members of the general public are not directed to a specific site based upon the search of a specific name. This process can be seen as “somewhat cosmetic, because you will still be able to find the in-

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102. *Id.*

103. Douglas, *supra* note 94.

104. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 196 (1890).

105. Luciano Floridi, *On Personal Data, Forgiveness, and The “Right to Be Forgotten,”* 25:50 YOUTUBE (Mar. 10, 2015), available at <https://www.youtube.com/watch?v=JVTu-0SfvzQ>.

formation if you are industrious about how you search for it.”<sup>106</sup> *González* is a prime example as the European Court of Justice ruled that Google had to delink URLs from search results for *González*, but the newspaper did not have to change/remove/delete any data.<sup>107</sup> Similarly, in the UK case discussed in Part III(2) above where the newspaper reprinted the citizen’s name and conviction when it found out that his delinking request had been approved, the ICO held that the articles were very relevant to the public’s interest and should not be altered but that there was no relevance in restating the citizen’s name and conviction which Google had just agreed was irrelevant.<sup>108</sup> Thus, the articles remain, but the citizen’s name has been delinked.

## V. CONCLUSION

The right to be forgotten is a basic human right, and its recognition will only expand further with the increase in the number of countries required to acknowledge its existence in order to legislate the issue and make their own rulings. Although many legitimate arguments can be made against the implementation of the right to be forgotten, most of them can be easily dismissed.

Linguistics have caused a huge division in the discussions about this right due to the usage of words like “deleted,” “removed,” and, most importantly, “forgotten.” These words have created a worldview that information is being censored or altered, when in fact, there has been no censorship, deletion or alteration of facts. The European courts have drawn distinct boundaries through their decisions regarding rights to privacy and rights to expression.

Simply because people desire to know everything about a person does not grant them the right to circumvent that individual’s rights to privacy. If it had been suggested decades ago that we compile a searchable database with every single fact about a person, just in case people “wanted to know,” the idea would have been ridiculed. Yet, now that a public searchable database exists, some feel that it is their right to know any and all private information regarding another, regardless if it contradicts the UDHR right to privacy and reputation. To live in an unforgiving world that allows unrestricted access to all personal information would be detrimental to society. The Internet has created a world where information is stored and shared even when international governments consider it to be irrelevant by statute. When a government believes someone should be able to move on from a crime committed by them or to them, why does society believe that, simply because the Internet exists, that any and all information is theirs to know?

Arguments against the ability to implement a system for the right to be forgotten seem to disregard how well it has been applied in Europe. European courts have been able to respect both freedom of speech/press and the right to privacy at the same time. Moreover, other search engines have already begun preemptively implementing their own guidelines to mimic the concepts present in the

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106. Zoya Sheftalovich, *Google Ordered to Remove UK Search Results*, POLITICO (Aug. 21, 2015), available at <http://www.politico.eu/article/google-ordered-to-remove-uk-search-results/>.

107. *European Privacy Requests*, *supra* note 24.

108. INFORMATION COMMISSIONER’S OFFICE, *supra* note 35.



EU's Directive. The right to be forgotten is not perfect, but it is a necessity. As its implementation in Europe has already demonstrated, the right to be forgotten can be applied without hindering any other fundamental rights.

The right to be forgotten is very much a human right in that it exists to protect the basic human rights of privacy and reputation. There is evidence to show that the right to be forgotten may slowly become an international right over time. Its implementation will require an adjustment by many, but would be a necessary adjustment for a truly healthy, truly humane society.