Latin American Law Review | Revista Latinoamericana de Derecho

2

ISSN 2619-4880
LAT. AM. LAW REV.

DOSSIER

ENTRE EL DERECHO A LA VERDAD Y EL LLAMADO DERECHO AL OLVIDO:

RETOS A LA DEMOCRACIA EN LA ERA DIGITAL

Catalina Botero Marino
Editora invitada

Everaldo Lamprea Montealegre
Editor general

Universidad de los Andes Colombia | Facultad de Derecho

CIDE ESTUDIOS JURÍDICOS México

Contemporary Practical Alternatives to a "Right To Be Forgotten" in the United States

Jonathan Adam Holland
Harvard University, Project Manager at the Berkman Klein Center for Internet and Society
aholland@cyber.harvard.edu

Article received: July 9, 2018 | Accepted: August 21, 2018 | Modified: September 2, 2018

How to cite: Holland, Jonathan Adam. "Contemporary Practical Alternatives to a 'Right To Be Forgotten' in the United States". *Latin American Law Review* n.º 02 (2019): 23-60, doi: https://doi.org/10.29263/lar02.2019.02

Abstract

The "right to be forgotten" (RTBF), perhaps more accurately described as a "right of erasure", first emerged into mainstream public consciousness and practice with the European Court of Justice's May, 2014 ruling in the *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* case. A targeted and bespoke process for requesting the removal of specific search engine results only emerged in the months immediately following that ruling. The final contours and scope of that process are still not fully settled, and will likely continue to evolve as the EU's General Data Protection Regulation takes effect in May 2018.

However, the concept of an individual's right or ability to exercise some control over publicly available information about themselves dates back to well before Mr. Costeja's lawsuit, and extends well beyond the EU. The *Costeja* case itself did not purport to create a new right, only to include search engine results as relevant to and controlled by the EU's 1995 data protection law as "data controllers". The discussion of some sort of analogous right in both legal academia and in the courts dates back to at least 2006, if not to much earlier, perhaps even to the early part of the 20th century, using an expansive definition of the cultural concerns underlying RTBF.

In tandem with that global history of a de facto "right to be forgotten", there is a parallel history of mechanisms and practices intended or used to achieve this "forgetting", ranging from standard lawsuits to norms, to —more recently— the subversion of other, unrelated, official affordances for the removal or obscuring of online material.

Using examples from the Lumen project's database, this paper will examine some of the recent ways in which individuals in countries without a codified right of erasure have sought to be "forgotten" by using online content removal mechanisms originally grounded in other purposes and legal regimes, such as copyright, trademark, and defamation. The paper concludes with a speculative discussion of what effect, if any, the existence and repurposing of these alternative

mechanisms might have on the development or rejection of a separate RTBF jurisprudence, and what form that regime might take were it to be adopted.

Keywords

Right to be forgotten, copyright, defamation, Lumen database.

Alternativas contemporáneas prácticas al "derecho al olvido" en los Estados Unidos

Resumen

El "derecho al olvido", quizás mejor descrito como el "derecho de supresión", llegó por primera vez a la corriente popular de la conciencia y la práctica pública con el fallo del Tribunal de Justicia de la Unión Europea de mayo de 2014 sobre el caso *Google Spain SL, Google Inc. vs. Agencia Española de Protección de Datos, Mario Costeja González*. Un proceso específico y personalizado para solicitar la eliminación de resultados específicos del motor de búsqueda surgió en los meses inmediatamente posteriores a esa decisión. Los perímetros finales y el alcance de ese proceso aún no se han establecido por completo, y es probable que continúen evolucionando a medida que el Reglamento General de Protección de Datos de la Unión Europea entre en vigor en mayo de 2018.

Sin embargo, el concepto del derecho o la capacidad de un individuo para ejercer cierto control sobre la información disponible públicamente sobre él data de mucho antes de la demanda del Sr. Costeja, y se extiende mucho más allá de la Unión Europea. El caso *Costeja* en sí no pretendía crear un nuevo derecho, solo buscaba incluir los resultados de los motores de búsqueda como relevantes y controlados por la ley de protección de datos de la Unión Europea de 1995 en términos de los "responsables del tratamiento". La discusión sobre un derecho análogo, tanto en la academia jurídica como en los tribunales, se remonta a por lo menos el año 2006, si no mucho antes, quizás incluso a principios del siglo XX, si utilizamos una definición amplia de las preocupaciones culturales subyacentes al derecho al olvido.

Junto con esa historia global sobre un "derecho al olvido" de facto, existe una historia paralela de mecanismos y prácticas destinados o utilizados para lograr este "olvido", que van desde demandas estándar y normas hasta, más recientemente, la subversión de otras posibilidades oficiales no relacionadas para la eliminación u ocultación del material en línea.

Utilizando ejemplos de la base de datos del proyecto *Lumen*, este artículo examinará algunas de las formas recientes en las que individuos en países sin un derecho de supresión codificado han buscado ser "olvidados" mediante el uso de mecanismos de eliminación de contenido en línea originalmente fundamentados en otros propósitos y regímenes legales, como derechos de autor, marca registrada y difamación. El artículo concluye con una discusión especulativa sobre el efecto, si es que lo hay, que podrían tener la existencia y el replanteamiento de estos mecanismos alternativos sobre el desarrollo o el rechazo de una jurisprudencia separada para el derecho al olvido, y qué forma podría adoptar ese régimen si se adoptara.

Palabras clave

Derecho al olvido, propiedad intelectual, difamación, base de datos Lumen.

INTRODUCTION AND BACKGROUND

The Costeja ruling

The "right to be forgotten" (RTBF) —perhaps more accurately described as a "right of selective de-indexing",[1] or "right to delisting",[2] since the "forgetting" involved is not and cannot be absolute—,[3] first emerged into mainstream public consciousness and practice with the European Court of Justice's (EUCJ) May, 2014 ruling in the *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* case.[4] In this case, the Court took up the question of whether the aspects of the 1995 Data Protection Directive,[5] dealing with "data controllers" and "data processors" (since superseded by the General Data Protection Directive that was adopted in April of 2016 and went into effect on May 25, 2018) also applied to search engines like Google. In an opinion that surprisingly chose not to heed the earlier recommendations of the EUCJ's Advocate-General[6] assigned to research and report on the issue, the court held that the directive did apply to search engines.[7] As a result, EU citizens like Costeja González were now able to request that certain Internet search engine results pertaining to a search for their name be removed from those results. The underlying details of the Costeja case were predicated on Costeja's request to Google in particular to remove a specific URL result, an announcement of bankruptcy proceedings in the Spanish newspaper La Vanguardia that the newspaper had been legally obligated to publish,[8] from online searches for his name.

---

1 Richard J. Peltz-Steele, "The 'Right to Be Forgotten' Online Is Really a Right to Be Forgiven", *The Washington Post*, November 21, 2014, http://www.washingtonpost.com/opinions/the-right-to-be-forgotten-online-is-really-a-right-to-be-forgiven/2014/11/21/2801845c-669a-11e4-9fdc-d43b053ecb4d_story.html; See also, Andrea Gonsalves and Justin Safayeni, "Privacy Commissioner's Draft Report on a 'Right to Be de-Indexed' Is Cause for Concern", *Centre for Free Expression (blog)*, March 26, 2018, https://cfe.ryerson.ca/blog/2018/03/privacy-commissioners-draft-report-right-be-de-indexed-cause-concern.

2 Peter Fleischer, "Implementing a European, Not Global, Right to Be Forgotten", *Google Europe Blog* (blog), July 30, 2015, https://europe.googleblog.com/2015/07/implementing-european-not-global-right.html.

3 George Orwell, *1984* (New York: Houghton Mifflin Harcourt Publishing Company, 1983); Melanie Dulong de Rosnay and Andres Guadamuz, "Memory Hole or Right to Delist? Implications of the Right to Be Forgotten for Web Archiving", *RESET,* n. ° 6 (2017), https://doi.org/10.4000/reset.807.

4 The Court of Justice of the European Union, (Google Spain SL y Google Inc. vs. Agencia Española de Protección de Datos [AEPD] y Mario Costeja González). C-131/12 (May 13, 2014), http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065.

5 "The European Parliament and of the Council, "Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data Directive 95/46/EC, Pub. L. No. 31995L0046, OJ L 281", (October 24, 1995), http://data.europa.eu/eli/dir/1995/46/oj/eng.

6 Niilo Jääskinen, (Opinion of Advocate General, Case C-131/12 Google Spain SL Google Inc. vs. Agencia Española de Protección de Datos [AEPD] and Mario Costeja González) (June 25, 2013), http://curia.europa.eu/juris/document/document.jsf?docid=138782&doclang=EN.

7 The Court of Justice of the European Union, "Google Spain SL vs. AEPD".

8 Kevin L. Vick, "The Right to Be Forgotten", *Media Law Resource Center* (n.d.), http://www.medialaw.org/component/k2/item/3994-the-right-to-be-forgotten. "The Spanish Ministry of Labour and Social Affairs had ordered publication of the announcements to attract bidders on the foreclosed properties".

The EUCJ ruling stated, controversially,[9] that going forward, once a request like Costeja's had been made, that it should initially be the search engines themselves[10] that would decide whether or not to honour and act on the request,[11] according to a list of criteria provided by the court,[12] with rejected requests appealable to the local national data protection authorities.[13]

The immediate response to the ruling

Google, because of its dominant market share[14] as a search engine within the EU region, was most immediately affected by the ruling. Facing potentially enormous fines,[15] and likely also needing a "win" in the court of public opinion, Google debuted[16] its new RTBF specific request form[17] only a few months after the *Costeja* ruling, just before[18] the EU released its own

9 David Lindsay, "The 'Right to Be Forgotten' by Search Engines under Data Privacy Law: A Legal Analysis of the Ruling", *Journal of Media Law* 6, n.º 2 (2015): 159-179, https://doi.org/10.5235/17577632.6.2.159.

10 Jean-Marie Chenou y Roxana Radu, "The 'Right to Be Forgotten': Negotiating Public and Private Ordering in the European Union", *Business & Society* (2017), https://doi.org/10.1177/0007650317717720.

11 Court of Justice of the European Union, "(Press Release n.° 70/14) An internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties", May 13, 2014, https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf; Jeff Ausloos, "European Court Rules against Google, in Favour of Right to Be Forgotten", *Media Policy Project (blog)*, May 13, 2014, http://blogs.lse.ac.uk/mediapolicyproject/2014/05/13/european-court-rules-against-google-in-favour-of-right-to-be-forgotten/; Nicholas A. Christakis and James H. Fowler, "The Spread of Obesity in a Large Social Network over 32 Years", *The New England Journal of Medicine* 357, n.º 4 (2007): 370-379, https://doi.org/10.1056/NEJMsa066082; Farhad Manjoo, "Right to Be Forgotten Online Could Spread", *The New York Times*, August 5, 2015, http://www.nytimes.com/2015/08/06/technology/personaltech/right-to-be-forgotten-online-is-poised-to-spread.html. "Upon receiving such a request, the search engine will have to make the necessary balance". http://blogs.lse.ac.uk/mediapolicyproject/2014/05/13/european-court-rules-against-google-in-favour-of-right-to-be-forgotten/.

12 The Court of Justice of the European Union, "Google Spain SL vs. AEPD".

13 European Commission, "What Are Data Protection Authorities (DPAs)?" (n.d.), https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-are-data-protection-authorities-dpas_en.

14 Matt Rosoff, "Here's How Dominant Google Is In Europe", *Business Insider*, November 29, 2014, accessed May 28, 2018, http://www.businessinsider.com/heres-how-dominant-google-is-in-europe-2014-11; "Search Engine Market Share Europe", *StatCounter Global Stats*, accessed July 9, 2018, http://gs.statcounter.com/search-engine-market-share/all/europe; "Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service", *European Commission – Press release*, June 27, 2017, accessed July 9, 2018, http://europa.eu/rapid/press-release_IP-17-1784_en.htm.

15 Owen Bowcott y Kim Willsher, "Google's French Arm Faces Daily €1,000 Fines over Links to Defamatory Article", *The Guardian*, November 13, 2014, http://www.theguardian.com/media/2014/nov/13/google-french-arm-fines-right-to-be-forgotten.

16 "Google sets up 'right to be forgotten' form after EU ruling", *BBC News*, May 30, 2014, http://www.bbc.com/news/technology-27631001.

17 "EU Privacy Removal", accessed May 29, 2018, https://www.google.com/webmasters/tools/legal-removal-request?complaint_type=rtbf&hl=en&rd=1&pli=1.

18 Julia Powles and Enrique Chaparro, "How Google Determined Our Right to Be Forgotten", *The Guardian*, February 18, 2015, http://www.theguardian.com/technology/2015/feb/18/the-right-be-forgotten-google-search.

RTBF guidelines.[19] This timing was controversial,[20] and also spoke volumes about how seriously Google was taking the ruling, as well as the resources Google considered necessary to invest —and had available— in addressing the implications of the ruling. The new tool also immediately brought to light both predictable[21] and unforeseen obstacles.[22] Private companies emerged to both facilitate EU citizens' participation in the process and offer insight into its mechanics as it evolved, and other search engines affected by the ruling also created their own mechanisms for making removal requests, although the scale of the requests subsequently sent to them was far smaller than those sent to Google.[23]

For example, ReputationVIP, a reputation management company, launched a service called "ForgetMe" that compared and cross-referenced Google Transparency Report results[24] to the requests filed through ReputationVIP's services, to accumulate and generate statistics about the nature of the requests for removal sent. Although ForgetMe's statistics page mentions data collected on requests sent to both Google and Bing, the discussion and underlying request data appear to deal almost exclusively with Google,[25] Bing is mentioned only once. ForgetMe's initial data from 2014 shows Bing receiving fewer than one thousand requests, compared to Google's nearly two hundred thousand, somewhat to Bing's chagrin.[26] Reputation VIP released

---

19 "'Right to be forgotten' Guidelines Published by European Regulators", *TechCrunch (blog),* November 28, 2014, http://social.techcrunch.com/2014/11/28/rtbf-29wp-guidelines/.

20 Powles and Chaparro, "How Google Determined Our Right to Be Forgotten". ("Nine months after the European ruling, it is clear that Google's implementation has been fast, idiosyncratic, and allowed the company to shape interpretation to its own ends, as well as to gain an advantage on competitors and regulators forced into reactive mode.") Chenou and Radu, "The 'Right to Be Forgotten'".

21 David Drummond, "We Need to Talk about the Right to Be Forgotten", *The Guardian*, July 10, 2014, http://www.theguardian.com/commentisfree/2014/jul/10/right-to-be-forgotten-european-ruling-google-debate; Julia Powles, "Google's Data Leak Reveals Flaws in Making It Judge and Jury over Our Rights", *The Guardian*, July 14, 2015, http://www.theguardian.com/technology/2015/jul/14/googles-data-leak-right-to-be-forgotten.

22 Marcus Wohlsen, "For Google, the 'Right to Be Forgotten' Is an Unforgettable Fiasco", *WIRED*, March 7, 2014, accessed May 29, 2018, https://www.wired.com/2014/07/google-right-to-be-forgotten-censorship-is-an-unforgettable-fiasco/; Chris Moran, "Things to Remember about Google and the Right to Be Forgotten", *The Guardian*, July 3, 2014, http://www.theguardian.com/technology/2014/jul/03/google-remember-right-to-be-forgotten; James Ball, "Google Admits to Errors over Guardian 'right to Be Forgotten' Link Deletions", *The Guardian*, July 10, 2014, http://www.theguardian.com/technology/2014/jul/10/google-admits-errors-guardian-right-to-be-forgotten-deletions; James Ball, "EU's Right to Be Forgotten: Guardian Articles Have Been Hidden by Google", *The Guardian*, July 2, 2014, http://www.theguardian.com/commentisfree/2014/jul/02/eu-right-to-be-forgotten-guardian-google.

23 Rhiannon Williams, "Microsoft's Bing Begins Taking 'right to Be Forgotten' Requests", *The Telegraph,* July 17, 2014, http://www.telegraph.co.uk/technology/microsoft/10974029/Microsofts-Bing-begins-taking-right-to-be-forgotten-requests.html; "Request Form to Block Search Results in Europe", *Bing*, accessed May 29, 2018, https://www.bing.com/webmaster/tools/eu-privacy-request; Stuart Dredge, "Microsoft and Yahoo Responding to 'right to Be Forgotten' Requests", *The Guardian*, December 1, 2014, http://www.theguardian.com/technology/2014/dec/01/microsoft-yahoo-right-to-be-forgotten.

24 "Search Removals under European Privacy Law", *Google Transparency Report*, accessed May 29, 2018, https://transparencyreport.google.com/eu-privacy/overview.

25 "Forget.me: discover what is the Right to Be Forgotten", *Reputation VIP (blog)*, accessed May 29, 2018, https://www.reputationvip.com/blog/forget-me.

26 Liam Tung, "Bing and Yahoo Respond to 'right to Be Forgotten' Requests", *ZDNet*, December 1, 2014, accessed May 29, 2018, https://www.zdnet.com/article/bing-and-yahoo-respond-to-right-to-be-forgotten-requests/; Williams, "Microsoft's Bing Begins Taking 'right to Be Forgotten' Requests"; Mike Masnick, "Apparently Not Too

a follow-up analysis in 2016[27] with similar and more extensive data, as well as a retrospective report in May 2018, where they announced that they were "closing" their service, due, in part, to the GDPR and the maturation of the RTBF.[28]

Subsequent developments

The contours and scope of the RTBF request and removal process, especially how search engines are to decide what online material may be deemed suitable for removal and why,[29] has continued and will likely continue to evolve,[30] especially in the wake of the EU's General Data Protection Regulation having become law as of May 25, 2018,[31] and especially with the GDPR offering removal of information as an entitlement to EU citizens, one with privileges over a number of services beyond search engines. Most notably, related more recent high-profile litigation such as the various *Equustek v. Google cases*[32] *and the on-going CNIL lawsuit against Google in France*[33] *have grappled with the question of whether a particular country's rulings on de-indexing should have global reach*. Ironically, the original *Costeja* case and its plaintiff have become so iconic and embedded in public consciousness that the Spanish Data Protection Authority subsequently ruled that Mr. Costeja had become a sufficiently public figure that

---

Many People In Europe Care About Having Microsoft's Bing 'Forget' Them", *Techdirt*, July 11, 2014, https://www.techdirt.com/articles/20140710/16275627843/apparently-not-too-many-people-europe-care-about-having-microsofts-bing-forget-them.shtml.

27 "Right to Be Forgotten: Two Years On", *Reputation VIP (blog)*, May 12, 2016, https://forget.me/wp-content/uploads/2018/05/PR_RTBF-2-years-on_Reputation-VIP.pdf. ("Bing therefore represents 6% of all the URLs sent by Forget.me.")

28 Reputation VIP (blog), "Forget.Me : discover".

29 Jamie Grierson, "'Right to Be Forgotten' Claimant Wants to Rewrite History, Says Google", *The Guardian*, February 27, 2018, http://www.theguardian.com/technology/2018/feb/27/right-to-be-forgotten-claimant-wants-to-rewrite-history-says-google.

30 "Google Updates 'Right to Be Forgotten' Form", *MediaMaze*, accessed May 29, 2018, https://www.mediamaze.nl/google-updates-right-to-be-forgotten-form/.

31 "GDPR Is in Effect: Now You Decide on Your Digital Privacy", *News European Parliament*, May 25, 2018, http://www.europarl.europa.eu/news/en/headlines/society/20180522STO04023/gdpr-is-in-effect-now-you-decide-on-your-digital-privacy; Eugenia Politou, Efthimios Alepis, y Constantinos Patsakis, "Forgetting Personal Data and Revoking Consent under the GDPR: Challenges and Proposed Solutions", *Journal of Cybersecurity* 0, n.º 0 (2018), https://doi.org/10.1093/cybsec/tyy001.

32 The Supreme Court of Canada, "Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 SCR 824", https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do; Alicia Loh, "Google v. Equustek: United States Federal Court Declares Canadian Court Order Unenforceable", *Jolt Digest*, November 16, 2017, accessed September 3, 2018, https://jolt.law.harvard.edu/digest/google-v-equustek-united-states-federal-court-declares-canadian-court-order-unenforceable.

33 "Google v. CNIL (CJEU)", *Reporters Committee for Freedom of the Press*, November 29, 2017, https://www.rcfp.org/browse-media-law-resources/briefs-comments/google-v-cnil-cjeu; Mark Scott; "French Court Refers Google Privacy Case to ECJ", *Politico*, July 19, 2017, https://www.politico.eu/article/french-court-refers-google-privacy-case-to-ecj/.

he no longer qualified as someone who could exercise his right to be removed from search results,[34] a perfect example of the Streisand Effect in action.[35]

HISTORICAL ANTECEDENTS AND POSSIBLE EXPANSION

Historical Antecedents

Although the *Costeja* case and ruling have come to stand as convenient symbols of the "right to be forgotten", the case and its ruling's aftermath have almost certainly brought the concept and its practical application to popular consciousness and for the first time; the concept of an individual member of society having some kind of right or ability to exercise a degree of control over publicly available information about themselves has existed in a number of countries beyond the EU,[36]dating back prior to the 2014 ruling, prior to Mr. Costeja's 2010 lawsuit, and possibly beyond. Indeed, the *Costeja* case itself did not purport to create a new right, only to include search engines and their results as relevant to and controlled by the EU's 1995 data protection law.[37] Both legal academia[38] and the courts have discussed an analogous right since at least 2009,[39] if not since much earlier, perhaps even since the early part of the 20th century or before,[40] using a more expansive definition of the cultural concerns underlying RTBF.

---

34 Miguel Peguera, "No More Right-to-Be-Forgotten for Mr. Costeja, Says Spanish Data Protection Authority", *CIS The Center for Internet and Society (blog)*, October 2, 2015, accessed May 29, 2018, http://cyberlaw.stanford.edu/blog/2015/10/no-more-right-be-forgotten-mr-costeja-says-spanish-data-protection-authority.

35 Victoria Turk, "The Streisand Effect of Google Forget", *Motherboard*, July 3, 2014, http://motherboard.vice.com/read/the-streisand-effect-of-google-forget; Mike Masnick, "For 10 Years Everyone's Been Using 'The Streisand Effect' Without Paying; Now I'm Going To Start Issuing Takedowns", *Techdirt*, January 8, 2015, accessed June 5, 2018, https://www.techdirt.com/articles/20150107/13292829624/10-years-everyones-been-using-streisand-effect-without-paying-now-im-going-to-start-issuing-takedowns.shtml.

36 Edward L. Carter, "Argentina's Right to Be Forgotten", *Emory International Law Review* 27, n.º 1 (2013), http://law.emory.edu/eilr/content/volume-27/issue-1/recent-developments/argentinas-right-to-be-forgotten.html.

37 The European Parliament and of the Council, "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", No. L 281/31. November 23, 1995.

38 L. Gordon Crovitz, "Forget Any 'Right to Be Forgotten'", *Wall Street Journal*, November 15, 2010, https://www.wsj.com/articles/SB10001424052748704658204575610771677242174; Rolf H. Weber, "The Right to Be Forgotten More Than a Pandora's Box?", *JIPITEC* 2, n.º 2 (2011), http://www.jipitec.eu/issues/jipitec-2-2-2011/3084; Meg Leta Ambrose and Jef Ausloos, "The Right to Be Forgotten Across the Pond", *Journal of Information Policy* 3 (2013): 1-23, https://doi.org/10.5325/jinfopoli.3.2013.0001; Conrad Coutinho, "The Right to Be Forgotten?", *The Columbia Science and Technology Law Review (blog)*, April 6, 2011, http://stlr.org/2011/04/06/the-right-to-be-forgotten/.

39 Viktor Mayer-Schönberger, *Delete. The Virtue of Forgetting in the Digital Age* (Paperback, 2011), accessed May 29, 2018, https://press.princeton.edu/titles/9436.html.

40 Samuel D. Warren y Louis D. Brandeis, "The Right to Privacy", *Harvard Law Review* 4, n.º 5 (December 15, 1890): 193-220.

Roughly similar concepts have been called a right to "practical obscurity"[41] in United States jurisprudence; "droit d'oubli" in France[42] and in French-speaking Canada prior to the EUCJ's *Costeja* ruling;[43] and as a "right of cancellation" in Mexico's data protection law,[44] to name only a few. However, most prior discussion of similar ideas fell under the rubric of privacy[45] or defamation law. In fact, questions of reputation underlie many of the current RTBF or GDPR right of erasure requests being made, with privacy concerns, especially for businesses as the other top category of request.[46]

Possible Expansion

Whatever the broad concept behind RTBF has been or is now being called, there is a powerful current global demand by individuals for the ability to control the nature and tenor of one's online "identity", or presence, even in countries that place high value on unrestricted speech such as the United States.[47] In fact, a 2015 poll of US citizens found that 88% either somewhat

---

41 "DOJ v. Reporters Comm. for Free Press, 489 U.S. 749 (1989)", *Justia Us Supreme Court*, accessed May 29, 2018, https://supreme.justia.com/cases/federal/us/489/749/case.html; Arminda Bradford Bepko, "Public availability or practical obscurity: the debate over public access to court records on the internet", *New York Law School Law Review* 49, (2005): 26; David Hoffman, Paula Bruening y Sophia Carter, "The Right to Obscurity: How We Can Implement the Google Spain Decision", *North Carolina Journal of Law & Technology* 17, n.º 3 (2016), http://ncjolt.org/the-right-to-obscurity/; Alexandra Rengel, "Privacy as an International Human Right and the Right to Obscurity in Cyberspace", *Groningen Journal of International Law* 2, n.º 2 (2014), https://ssrn.com/abstract=2599271; Woodrow Hartzog and Evan Selinger, "Obscurity: A Better Way to Think About Your Data Than 'Privacy'", *The Atlantic*, January 17, 2013, https://www.theatlantic.com/technology/archive/2013/01/obscurity-a-better-way-to-think-about-your-data-than-privacy/267283/.

42 Eloise Gratton y Jules Polonetsky, "Droit À L'Oubli: Canadian Perspective on the Global 'Right to Be Forgotten' Debate", *Colorado Technology Law Journal* 15, n.º 2 (2017), https://ssrn.com/abstract=2944012; "French Government Secures 'Right to Be Forgotten' on the Internet", *Privacy & Information Security Law Blog (blog)*, October 21, 2010, https://www.huntonprivacyblog.com/2010/10/21/french-government-secures-right-to-be-forgotten-on-the-internet/.

43 Daphne Keller, "A Right to Be Forgotten in Canada?", *CIS The Center for Internet and Society (blog)*, May 1, 2018, accessed June 28, 2018, http://cyberlaw.stanford.edu/blog/2018/05/right-be-forgotten-canada. ("The Office of the Privacy Commissioner of Canada (OPC) recently concluded, in a Draft Position Paper, that such a right actually exists already").

44 Angelique Carson, "The Responsibility of Operationalizing the Right To Be Forgotten", *iaap*, March 12, 2015, accessed June 5, 2018, https://iapp.org/news/a/the-responsibility-of-operationalizing-the-right-to-be-forgotten/.

45 Antoon de Baets, "A Historian's View on the Right to Be Forgotten", *International Review of Law, Computers & Technology* 30, n.º 1-2 (2016): 57-66, https://doi.org/10.1080/13600869.2015.1125155; Warren y Brandeis, "The Right to Privacy".

46 Theo Bertram et al., "Three Years of the Right to Be Forgotten", *Elie Bursztein's site*, February 26, 2018, https://www.elie.net/publication/three-years-of-the-right-to-be-forgotten; "Forget.Me"; Reputation VIP, "Right to Be Forgotten: Two Years On"; "Search Removals under European Privacy Law", *Google Transparency Report*, accessed September 2, 2018, https://transparencyreport.google.com/eu-privacy/overview?lu=requests_over_time&requests_over_time=&hl=en.

47 Leticia Bode y Meg Leta Jones, "Ready to Forget: American Attitudes toward the Right to Be Forgotten", *The Information Society* 33, n.º 2 (2017): 76-85, https://doi.org/10.1080/01972243.2016.1271071.

or strongly supported the idea of a law that would allow US citizens to remove personal information from search engine results.[48] This is somewhat surprising in light of the First Amendment to the United States[49] Constitution, which guarantees, among other things, the freedom of speech, and which informs virtually all discussions of content regulation in the United States, especially since it is often considered a legal "outlier" among global free speech laws.[50] Although there is as of yet no true RTBF jurisprudence in the United States, there have been a few key cases that address the rights, obligations, and liability of search engines, at least, in the context of the First Amendment and intellectual property disputes.

Quite early on in Google's existence, in *Search King v. Google Inc*.,[51] a court ruled that Google's rankings were protected opinion. Later, *Zhang v. Baidu*[52] *addressed a search engine's own right of expression in 2013, (just prior to the judge advocate's advisory opinion in Costeja), somewhat controversially*[53] *finding that a search engine's decisions regarding results are themselves expressive content protected by the First Amendment*.

This desire for an ability to manage one's online reputation may be swiftly making its way into the US and global zeitgeist for a variety of reasons: because more and more of the citizenry's social interaction takes place online; because online material is more "permanent", at least in a chronological sense; because yesterday's or last year's headline news is potentially just as accessible as today's, and any associated harm is similarly evergreen;[54] because digitisation of archives and records is gradually eliminating obscurity-based privacy; because the ease of access and ubiquity of the web mean that online information always has a potentially global audience, making it increasingly difficult to leave one's past behind by virtue of the passage of time or a change in geography; or, most likely, because of some combination of all of these. Social expectations, mores, and coping mechanisms have not been able to evolve as rapidly as technology, its affordances, and its consequences.

---

48 Mario Trujillo, "Public Wants 'right to Be Forgotten' Online", *The Hill*, March 19, 2015, http://thehill.com/policy/technology/236246-poll-public-wants-right-to-be-forgotten-online.

49 "First Amendment", *Legal Information Institute*, February 5, 2010, https://www.law.cornell.edu/constitution/first_amendment.

50 Adam Liptak, "Hate Speech or Free Speech? What Much of West Bans Is Protected in U.S.", *The New York Times*, June 11, 2008, https://www.nytimes.com/2008/06/11/world/americas/11iht-hate.4.13645369.html; Frederick Schauer, "The Exceptional First Amendment", *KSG Working Paper,* n.º RWP05-021 (2005), https://papers.ssrn.com/abstract=668543; Edward Lee, "The Right to Be Forgotten v. Free Speech", *I/S: A Journal of Law And Policy for the Information Society* 12, n.º 1 (2015): 28; Tim Wu, "Free Speech for Computers?", *The New York Times*, June 19, 2012, https://www.nytimes.com/2012/06/20/opinion/free-speech-for-computers.html.

51 Search King Inc. v. Google Tech., Inc., n.º CIV-02-1457-M, 2003 WL 21464568, at *1 (W.D. Okla. May 27, 2003).

52 Jian Zhang v. Baidu.com Inc., 10 F. Supp. 3d 433, 435 (S.D.N.Y. 2014).

53 Eugene Volokh y Donald M. Falk, "Google: First Amendment Protection for Search Engine Search Results", *Journal of Law, Economics & Policy* 8 (2012 2011): 883-900.

54 "Remedies for Cyber Defamation: Criminal Libel, Anti-Speech Injunctions, Forgeries, Frauds, and More", *Berkman Klein Center*, April 9, 2018, accessed June 28, 2018, https://cyber.harvard.edu/events/2018/luncheon/04/Volokh.

OTHER TECHNIQUES FOR THE REMOVAL OF ONLINE CONTENT

In tandem with this history and context of a de facto "right to be forgotten", and the desire for a power of removal or obfuscation, whether rooted in privacy, reputation or simple control, an ecosystem of mechanisms and practices has developed that are intended for and used to achieve some kind of "forgetting", at least in the form of the removal, whether partial or complete; or obscuring of online materials. Because of the historical accident that many, if not most, of the global internet's largest companies were founded in the United States,[55] this ecosystem exists, and is defined by, to a great extent, within the context of United States law, although it is used globally. This removal ecosystem's tools range from "standard" lawsuits and injunctions, usually having to do with defamation, to other official affordances for the removal or obscuring of online material, such as those rooted in copyright. The almost nine million requests[56] for removal of online information found within the Lumen database provide an intriguing and informative window into the use of these various tools, as well as into the mind-set and motivations of the individuals using them. Whether it is examples of the pre-Costeja, pre-GDPR practice of seeking to use copyright takedown requests to attain the (even temporary) removal of critical material or even information not subject to copyright; or the post-*Costeja* and GDPR error of using non-RTBF removal affordances to seek RTBF removal; or either continuing to rely on the judicial system, or gaming that same system,[57] the Lumen Database has an example of each. A closer look at these may offer some insight as to what sort of legislative action the United States (or another country currently without a legally defined RTBF), might take in the future with respect to creating its own version of a legal right to be forgotten.

EXAMPLES OF LUMEN NOTICES ROUGHLY ANALOGOUS TO RTBF REQUESTS

What is the Lumen project?

Lumen is an independent research project, based at the Berkman Klein Center for Internet & Society at Harvard University, that studies requests sent to platforms, search engines, and others to remove materials created or uploaded by Internet users, using legal or extra-legal theories. Formed in or around 2001 by Wendy Seltzer as the Chilling Effects Clearinghouse, the project's goals are to educate the public; to facilitate research into different kinds of complaints and requests for removal —both legitimate and questionable— that are sent to online publishers and service providers; and to provide as much transparency as possible about the "ecology" of

---

55 "The 25 Largest Internet Companies in The World", *WorldAtlas*, accessed September 3, 2018, https://www.worldatlas.com/articles/the-25-largest-internet-companies-in-the-world.html.

56 As of June 2018.

57 "Remedies for Cyber Defamation: Criminal Libel, Anti-Speech Injunctions, Forgeries, Frauds, and More | Berkman Klein Center". (Describing various categories of deliberately falsified court orders for removal of online materials.)

such notices in terms of who sends them, why, and to what effect. Lumen's database contains notices from a wide range of recipients and senders. Although the majority of the entities that share with Lumen copies of the removal requests they receive are based in the United States, the senders of those removal requests can be, and are, from all over the world, and visitors to Lumen come from virtually every country.[58]

Any comprehensive detailed examination of the entirety of Lumen's data corpus —approximately nine million notices as of this article's publication— is beyond the scope of a single individual's capacity. Even with the assistance of machine learning techniques, only broad aggregate and statistical conclusions are possible.[59] With that in mind, the discussion that follows is of necessity limited in scope, a preliminary overview, or pilot inquiry restricted to an initial pass over the Lumen corpus relying on the search tools Lumen makes available to the public.[60] It is unquestionably not methodologically rigorous or comprehensive. It is to be hoped that other researchers will have the time and inclination to pick up this gauntlet and carry out a more exhaustive examination of one or more of these topics. That being said, even at the low level of granularity of this first-pass approximation, several broad categories of attempts to achieve the "forgetting" or functional obscurity of pieces of online material do clearly emerge.

THREE CATEGORIES OF NOTICES IN THE LUMEN DATABASE USING CURRENTLY EXISTING REMOVAL MECHANISMS TO ATTAIN THE "FORGETTING" OF ONLINE MATERIAL

"Misapplied" copyright notices

Broadly, this category includes any removal requests using US copyright law's Digital Millennium Copyright Act (DMCA) notice and takedown (N&TD) system, to seek or attain takedowns where no copyright interest is involved; or, even if a valid copyright claim could be made, traditional copyright interests are only tangentially involved or not at stake at all.[61] These notices do

58 Primarily Europe and North America, but including Antarctica, and usually excluding South Sudan and the Tibetan autonomous region, and one or two other countries, depending on the week.

59 Daniel Kiat Boon Seng, "'Who Watches the Watchmen?'", *An Empirical Analysis of Errors in DMCA Takedown Notices* (2015), https://papers.ssrn.com/abstract=2563202.

60 The examples offered here are results of searches of the Lumen database primarily conducted between March and June of 2018 of a data corpus containing material from 2002 to the present the notices resulting from these searches date primarily from May of 2014 onward, but the oldest notice mentioned in this paper is dated January, 2008, and the database contains more recent examples of notices within the various categories described, e.g., https://www.lumendatabase.org/notices/17178131.

61 The Berkman Klein Center for Internet & Society, "William Fisher, CopyrightX: Lecture 2.2, Fairness and Personality Theories: Fairness", YouTube video, 32:45, published January 16, 2015, https://www.youtube.com/watch?v=HYJuhPf9s5k&feature=youtu.be; The Berkman Klein Center for Internet & Society, "William Fisher, CopyrightX: Lecture 2.3, Fairness and Personality Theories: Personality", YouTube video, 27:30, published January 16, 2015, https://www.youtube.com/watch?v=hsAcrcveg6k&feature=youtu.be; The Berkman Klein Center for Internet & Society, "William Fisher, CopyrightX: Lecture 4.1, Welfare Theory: The Utilitarian Framework", YouTube video, 38:11, published February 2, 2015, https://www.youtube.com/watch?v=3ISstJYsCWs&feature

not mention forgetting, but their broader underlying goal is the same: to have specific content items made unavailable to the public.

Within this group of "misapplied" DMCA notices, at least three distinct subsets are readily apparent. Only two of these are requests seeking removals to "forget", but the details of the third offer useful parallels for considering the expansion of removal tools beyond their originally intended use especially within a legal regime like that of the United States.

DMCA notices with a weak or absent underlying copyright interest

Lumen's database contains DMCA notice requests for the removal of material where there is no underlying copyright. The material in question might be explicitly non-copyrightable;[62] or the sender might not possess a copyright to enforce;[63] the request might seek the removal of material not related to the copyright;[64] or the underlying material might be more appropriately protected by enforcing another right, such as trademark —(see below for more on this)—. These notices represent either a misunderstanding of the scope and boundaries of the DMCA[65] —not everyone is an expert on US federal copyright law—[66] or possibly a knowing misuse of the DMCA system, whether malicious or well-intentioned, in recognition of the scale at which many OSPs, such as Google or Twitter, receive DMCA notices; as well as the toothless penalties for false submission[67] and therefore, the likelihood that sending such a notice will still achieve

---

=youtu.be; The Berkman Klein Center for Internet & Society, "William Fisher, CopyrightX: Lecture 4..2, Welfare Theory: The Incentive Theory of Copyright", YouTube video, 30:32, published February 2, 2015, https://www.youtube.com/watch?v=t9wqQNCC-Vs&feature=youtu.be.

62 See, e.g., https://www.lumendatabase.org/notices/13339016 (A police department issues a DMCA complaint to news organisations regarding mug shots, which are non-copyrightable public records.)

63 Mostafa El Manzlawy, "Data from the Lumen Database Highlights How Companies Use Fake Websites and Backdated Articles to Censor Google's Search Results" *Lumen (blog)*, August 24, 2017, https://www.lumendatabase.org/blog_entries/800. (A discussion and analysis of backdating DMCA complaints to remove negative reviews and other content).

64 See, e.g., notices 16954610, 16954773, 16954644 and 16954731, each of which was sent by a company named "Topple Track" and each of which contained allegedly infringing links unrelated to the underlying copyright. See also, Timothy Geigner, "The Premier League Kindly Requests Google De-List All Of Facebook Over Copyright Infringement Claims", *Techdirt*, May 4, 2017, https://www.techdirt.com/articles/20170501/06245137279/premier-league-kindly-requests-google-de-list-all-facebook-over-copyright-infringement-claims.shtml; https://lumendatabase.org/notices/16876152, ("makes a couple of dozen copyright claims, only bothers to list infringing URLs for a few of those claims, and demands the delisting all of Crunchyroll.com, a Discogs listing for singer Robbie Williams, a Wired story about a Kickass Torrents piracy prosecution, and a tourist's guide to Kensington. These are all supposedly infringing on the AIAA's 'Introduction to Aeronautics'").

65 Mike Masnick, "The DMCA should not be an all purpose tool for taking down content; and it's especially bad for harassment", *Techdirt*, May 27, 2016, https://www.techdirt.com/articles/20160527/01241334560/dmca-should-not-be-all-purpose-tool-taking-down-content-espeically-bad-harassment.shtml.

66 See, e.g. "we were in correspondence with your colleagues about a defamatory content post, which had been created by Daily Motion. This website has been using my videos content without my consent in which I find defamatory and libellous action coming from www.dailymotion.com. What information violates our copyrights?" (Correspondence to Lumen, 2017-07-03).

67 The portion of the DMCA that addresses this, 17 USC 512(f) is notoriously weak, and the number of successful 512(f) court proceedings that have been brought is vanishingly few. See DMLP Staff, "Tuteur v. Crosley-

a successful, if temporary, removal. This is probably the largest sub-category of RTBF-analogous notices. DMCA-based notice-and-takedown is the largest, most prominent, most well known (if not most well-understood), and most well instantiated N&TD mechanism currently available to members of the public. It is also the mechanism that has been available the longest, dating back to 1998, only a few years after the explosion of the Internet and Web into common usage and parlance. As one final element leading to DMCA notices being seen as a near universal removal tool, there is the near-ubiquitous notification at the bottom of many Google search result pages.[68] Google is the primary search engine for many Internet users,[69] and it is all too easy to skip right past "copyright" —itself a potentially confusing topic— to "removals".

Typical examples of DMCA notice submissions seeking the removal of non-copyrighted material include those aimed at removing government documents, other public materials, and requests motivated by reputational or privacy concerns. As of this writing, there are several thousand DMCA notices in the Lumen database that contain the words "privacy". Compared to the millions of DMCA notices, this is an insignificant fraction, but it is important to recall that each of these notices may well represent an individual and their story. Seen another way, several thousand people have tried to use the DMCA to remove what they considered to be private information from the Web, and subtracting out the notices that contain "Electronic Communications Privacy Act" in boilerplate[70] still leaves several hundred.[71] Additionally, there are several hundred DMCA notices in the Lumen database that contain the word "reputation", including, as just a few examples, notices 10115339,[72] 1945884,[73] 12747534,[74] 12766591,[75] and 12731263.[76]

Corcoran", *Digital Media Law Project*, April 29, 2013, accessed el July 3, 2018, http://www.dmlp.org/threats/tuteur-v-crosley-corcoran; Eric Goldman, "Another 512(f) Claim Fails-Tuteur v. Crosley-Corcoran", *Technology & Marketing Law Blog (blog)*, April 13, 2013, https://blog.ericgoldman.org/archives/2013/04/another_512f_cl_1.htm; "512(f) Stories", *Techdirt*, accessed July 3, 2018, https://www.techdirt.com/blog/?tag=512%28f%29; "Automattic Inc. v. Steine, 82 F.Supp.3d 1011 (2015)" *Leagle*, accessed July 3, 2018, https://www.leagle.com/decision/infdco20150303850; Eric Goldman, "It Takes a Default Judgment to Win a 17 USC 512(f) Case-Automattic v. Steiner", *Technology & Marketing Law Blog (blog)*, March 13, 2015, https://blog.ericgoldman.org/archives/2015/03/it-takes-a-default-judgment-to-win-a-17-usc-512f-case-automattic-v-steiner.htm ("512(f) was a good idea, but it has failed terribly in the field").

68 "*In response to multiple complaints we received under the US Digital Millennium Copyright Act, we have removed 4 results from this page. If you wish, you may read the DMCA complaints that caused the removals at LumenDatabase.org.*"

69 "Top 15 Most Popular Search Engines | May 2018", *eBIX The eBusiness,* accessed July 5, 2018, http://www.ebizmba.com/articles/search-engines.

70 E.g., https://www.lumendatabase.org/notices/12561136.

71 https://www.lumendatabase.org/notices/12728486 (alleging phone numbers are present at complained-of links).

72 https://www.lumendatabase.org/notices/10115339 (a lengthy list of infringed rights).

73 https://www.lumendatabase.org/notices/1945884.

74 https://www.lumendatabase.org/notices/12747534 (another long list of alleged infractions, the material in question is a meme using what appears to be a paparazzi photo, and the rights holder is a publishing company).

75 https://www.lumendatabase.org/notices/12766591 (Alleging reputational harm because of a company's inclusion in the U.S Treasury's list of "OFFICE OF FOREIGN ASSETS CONTROL Specially Designated Nationals and Blocked Persons List"); one of many similar requests regarding this document.

76 https://www.lumendatabase.org/notices/12731263 ("my image and reputation being used in a slanderous light and my image and real name used without my permission").

DMCA notices seeking removal of non-consensually distributed intimate images ("NCII")

NCII images are more colloquially known as "revenge porn" but this is a misleading label.[77] NCII is a more accurate term.[78] The subject of a non-consensually distributed intimate image photograph may or may not have the copyright on the images in question.[79] It is true that the right to control the distribution of copies is a baseline right within copyright law doctrine,[80] especially works not yet (or ever) to be published, but the roots of the underlying concerns motivating that right within traditional copyright law doctrines are not usually linked to a desire to remove a copyrighted work from public consciousness because of the reputational concerns associated with its content.[81] Those concerns are more traditionally associated with privacy.[82] NCII images (and how to handle them) are a charged and contentious topic,[83] with the issue prominently featured in late 2014 when the so-called "Celebgate"[84] data theft took place.[85] At least some of the celebrities involved launched on-going legal campaigns to have their images removed from the many locations at which copies were stored, as well as from Google search, and there are many related notices in Lumen's database.[86] Additionally, there are over 800 DMCA notices that contain the word "nude" and over six hundred containing "naked".[87] It seems inarguable that were an RTBF to exist in the USA, individuals would be sending similar notices, but with different labels, used to remove these images and links to them. Whether the

---

77 "'Revenge Porn': The Non-Consensual Sharing of Intimate Images", "Revenge Porn": The Non-Consensual Sharing of Intimate Images, accessed June 29, 2018, https://www.buddenlaw.com/blog/revenge-porn-the-non-consensual-sharing-of-intimate-images; Lauren Evans, "Please Stop Calling It 'Revenge Porn'". The Establishment, May 30, 2018, https://theestablishment.co/please-stop-calling-it-revenge-porn-2252f5280e12; Lane Florsheim, "Why We Need to Stop Calling It 'Revenge Porn'", Marie Claire, May 6, 2015, https://www.marieclaire.com/culture/news/a14219/online-harassment-ashley-judd-anita-sarkeesian-kamala-harris-kate-couric-witw-panel/.

78 There is no universally agreed on term. Non-consensual pornography, or ("NCP") is also common.

79 Antigone Davis, "The Facts: Non-Consensual Intimate Image Pilot", *Facebook Newsroom*, November 9, 2017, accessed el June 29, 2018, https://newsroom.fb.com/news/h/non-consensual-intimate-image-pilot-the-facts/; "'Revenge Porn'".

80 The Berkman Klein Center for Internet & Society, "William Fisher, CopyrightX: Lecture 7.1, The Rights to Reproduce and Modify: Reproduction", YouTube video, 28:43, published February 14, 2015, https://www.youtube.com/watch?v=_YmnWVDO19o&feature=youtu.be.; see also "Lectures", *CopyrightX (blog),* October 31, 2013, http://copyx.org/lectures/.

81 Even the concept of "moral rights" seems slightly inapposite here, since the authorship of the work in question is being exploited as a loophole, rather than as a connection to celebrate.

82 Danielle Keats Citron and Mary Anne Franks, "Criminalizing revenge porn", *Wake Forest Law Review* 49, n.º 345 (2014): 40.

83 Renee DiResta, "How to Not Protect Your Users", *Renee DiResta* (blog), June 8, 2016, https://medium.com/@noupside/how-to-not-protect-your-users-77d87871d716.

84 Also known as "the Fappening" or simply the iCloud leak.

85 Charles Arthur, "Naked Celebrity Hack: Security Experts Focus on iCloud Backup Theory", *The Guardian*, September 1, 2014, https://www.theguardian.com/technology/2014/sep/01/naked-celebrity-hack-icloud-backup-jennifer-lawrence.

86 E.g., notices 16390483, 16241242, 16205745, 16204713, 16138367, 16180553 and unfortunately many more.

87 See, e.g., 13195444, 12874022.

DMCA is working effectively to do so, or whether it is the correct tool with which to do so, is an open question.[88] It should also be noted that because of the unusual nature and growing frequency of NCII removal requests, some OSPs have created special dedicated reporting mechanisms for them. For example, Google has a form for submitting NCII requests[89] and does not share copies of those requests with Lumen or include them in the Google Transparency Report.[90]

DMCA NOTICES SEEKING TO ENFORCE TRADEMARK ("TM") RIGHTS

There is no streamlined N&TD process in the US for trademarking as there is for copyright.[91] Although removal requests enforcing TM are not within the conceptual space of RTBF, it is worthwhile to consider this subset of "mistaken" DMCA removal requests because they are a perfect example of individuals or corporate entities re-purposing existing removal tools if they find that the available modalities are insufficient for their perceived needs. It is of course possible to bring and enforce a trademark claim, even with respect to online material, but to do so requires a lengthy and expensive court proceeding.[92] It is no wonder that trademark complainants, seeing the ease with which a DMCA complaint can be sent and the powerful effect it can have, might try to play a little fast and loose with the DMCA process in an attempt to fold trademark concerns in, especially given the close proximity of the two sets of rights. It seems more than plausible that analogous parallels between RTBF-analogous complaints and defamation or private information[93] claim related tools, to say nothing of copyright, may continue to emerge.

---

88 Amanda Levendowski, "Our Best Weapon Against Revenge Porn: Copyright Law?", *The Atlantic*, February 4, 2014, https://www.theatlantic.com/technology/archive/2014/02/our-best-weapon-against-revenge-porn-copyright-law/283564/; "Using Copyright Law to Fight Revenge Porn?", *Centre for Intellectual Property Policy*, December 20, 2016, accessed July 6, 2018, http://www.cippmcgill.ca/news/2016/12/20/using-copyright-law-to-fight-revenge-porn/; "Revenge Porn and Internet Privacy", *C.A. Goldberg*, accessed July 6, 2018, http://www.cagoldberglaw.com/revenge-porn-and-internet-privacy/; Jeff Roberts, "No, Copyright Is Not the Answer to Revenge Porn", *GIGAOM*, February 6, 2014, https://gigaom.com/2014/02/06/no-copyright-is-not-the-answer-to-revenge-porn/. ("[T]his approach also risks legitimising the use of copyright as a backdoor mechanism for censorship").

89 https://support.google.com/websearch/troubleshooter/3111061#ts=2889054%2C2889099.

90 https://transparencyreport.google.com/.

91 Patent law, the third of the three major IP categories, exists within its own ecosystem that for the time being rarely seeks the removal of online materials. The Lumen database contains fewer than fifteen thousand (out of over nine million) notices that even contain the word "patent", and many of those have to do with "patent leather" shoes. The ones that do not are typically contain expansive general claims rather than actually describing a patent infringement, see, e.g., https://www.lumendatabase.org/notices/45884; or believe for some reason that the DMCA is the correct mechanism for bringing an online patent claim; see, e.g. https://www.lumendatabase.org/notices/12075782.

92 "Trademark Bullying Stories", *Techdirt*, accessed June 29, 2018, https://www.techdirt.com/blog/?tag=trademark+bullying.

93 "This Is How a Tough New California Law Will Protect Internet Privacy", *USA Today*, June 28, 2018, accessed July 1, 2018, https://www.usatoday.com/story/tech/talkingtech/2018/06/28/how-tough-new-california-law-protect-internet-privacy/744171002/.

Some excellent preliminary work on this topic was performed by Lumen team members in 2013.[94] A few more recent examples of this notice type include notices 14504359,[95] which does not even pretend to be bringing a copyright claim; 12767693;[96] 12746343;[97] and 12755816.[98]

ERRONEOUS ATTEMPTS TO SUBMIT A LEGITIMATE RTBF REQUEST

The second major types of notice are erroneous attempts by individuals or companies to make use of the EU's Data Protection rights as described by the *Costeja* ruling. Searching Lumen for "right to be forgotten" with all words required yields approximately forty thousand results. Given that no search engines currently share copies of RTBF requests with Lumen, this represents a significant number of notices possibly linked in some way to the concept of RTBF, even allowing for DMCA and other notices that contain all 4 of those words by coincidence. The actual RTBF-related notices in this set likely represent a misunderstanding of RTBF and its mechanisms, but they also represent public awareness, however nascent, of a new way to remove online material and a desire to use it. Public perception and understanding of existing modalities, especially on the part of legislators may well shape the next incarnation of an RTBF system.

The larger set includes DMCA notices that are in fact attempts to submit RTBF requests. Some of them were even retroactively categorized as "official" data protection notices by Google, their recipient.[99] Still others reflect a kind of "kitchen sink" approach, citing any and every conceivable grounds for removal, in the hope that something will work.[100]

In another subset, some "court order" notices reference RTBF but are not actually documents from courts of law, or at least do not have an order attached or included. These notices come from a range of countries, including the US,[101] and include at least one from the US where the notice sender claims to be an EU citizen.[102] A few senders seem to have chosen the

---

94 Elizabeth Woolery, Sanna Kulevska, y Maria Serena Ciaburri, "Using the Chilling Effects Database for Research: Trademark Infringement Claims as Censorship", *Lumen Blog (blog)*, July 9, 2013, https://www.lumendatabase.org/blog_entries/646. ("The vast majority (61%) of the takedown notices studied here were not sent by market competitors. Only 12% of notices identified were sent by a market competitor. However, 21% of notices were sent by someone who was clearly anti-trademark holder, a fact which was apparent based on the text of the notice").

95 https://www.lumendatabase.org/notices/14504359.

96 https://www.lumendatabase.org/notices/12767693 ("this publishes are doing bad for my reputation! it was a chapter of my life that I don't want to remember anymore!").

97 https://www.lumendatabase.org/notices/12767693.

98 https://www.lumendatabase.org/notices/12755816.

99 E.g., https://www.lumendatabase.org/notices/12742674.

100 E.g., https://www.lumendatabase.org/notices/12757686 (Containing a laundry list of over twenty different laws, directives, regulations and advisories).

101 https://www.lumendatabase.org/notices/12960526.

102 https://www.lumendatabase.org/notices/12712398.

route of excess, and have sent many identical "court order" requests.[103] Others are simply making sure their request is seen or acted on.[104]

Other notice senders do not understand the complexities of the RTBF as instantiated,[105] and apparently think that performatively,[106] or almost talismanically invoking or naming RTBF as a right is sufficient, whether or not they actually use the words "right to be forgotten" or "data protection". This contrasts from the correct use of the form provided by Google or other search engines for this purpose, and thereby allowing the request to be evaluated according the EUCJ's criteria and developing precedent.[107] These confused requestors could be EU citizens or their agents using the wrong tools to submit what might otherwise be a valid claim.[108] Still others have sent RTBF notices directly to Lumen,[109] possibly to "troll" Lumen.[110] Finally, at least a few curious notices from the same sender were sent as defamation notices, but reference data protection, with the URLs themselves containing the text "right to be forgotten".[111]

QUESTIONABLE COURT ORDERS FOR REMOVAL

This broad category of notices includes court orders for the removal of online material, for whatever reason, that do not qualify as "appropriate" or at their core legal, court orders. There are two typical types: first, court orders generated through appropriate legal processes, the expansiveness of which may exceed the bounds of what is legally permissible,[112] but only

---

103 The sender of notice 12712114 has sent at least twenty identical notices, all with the text "I want to delete my name … at Google Search for the URL above. My argument to delete the URL above is "Court Order 13 May 2014 - the "Right to be forgotten" - under European Union Court of Justice decision as found at Internet under web_ http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf",12712114.

104 https://www.lumendatabase.org/notices/12710663 ("I have the right to be forgotten and already went through this with Google. I am simply submitting another request. http://eur-lex.europa.eu/legal-content/EN/LKD/?uri=CELEX_62012CJ0131")

105 See, e.g. https://www.lumendatabase.org/notices/10803969 ("I'm in my right to be forgotten"); https://www.lumendatabase.org/notices/12757686 (listing every conceivable cause of action).

106 John L. Austin and John Langshaw Austin, *How to Do Things with Words* (Harvard University Press, 1975).

107 https://www.lumendatabase.org/notices/13538064.

108 E.g., https://www.lumendatabase.org/notices/12742674; https://www.lumendatabase.org/notices/10156907.

109 https://www.lumendatabase.org/notices/14974185.

110 See, e.g., https://www.lumendatabase.org/notices/14500720 ("This user requested removal of 988758491 URLs.)

111 See, e.g., Notices IDs 12865556, 12459129 and 12459129.

112 See, e.g., https://www.lumendatabase.org/notices/13746934, Eugene Volokh, "REVISED AMICUS CURIAE BRIEF OF EUGENE VOLOKH IN SUPPORT OF APPELLANT", May 18, 2017, 76.; Lumen has also occasionally received copies of court orders that have been amended after the fact to specifically mention Lumen. E.g., ("IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff request that any websites or Internet databases, including lumendatabase.org, that displays any pleadings, Orders (including this Order), or other information or documents from this case that contain the defamatory Statements or above listed URLs, to remove such documents, Statements, URLs, or pieces of information in their entirety from the Internet".) SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA CASE NO. 2015CV258140, 2nd Amended Final Order.

on close inspection; second, deliberately falsified orders. Both typically seek to achieve the removal of material for which there would be no other legal recourse for removal, and which would therefore otherwise remain online, absent a valid court order and the implicit determination of illegality. Both types exploit the weak points of the judicial system, as well as those of OSP removal mechanisms generally.

Professor Eugene Volokh of UCLA School of Law is performing incredible research with the Lumen database on the topic of falsified US court order removal notices. His work has revealed quite a few intriguing examples of these.[113] Some are amateurish.[114] But, more concerning than these, there appear to be entire businesses whose revenue model is built around removing online materials that are critical of their clients, specifically by operationalising falsified court orders.[115]

The practical implications of these developments regarding US court orders should be of great concern to any legislative drafter working on an RTBF law. Previously, a properly presented court order was a kind of "gold standard" for removals.[116] If this can no longer be presumed, and it is not only possible but likely that as many as ten per cent or more of US court orders may have issues, the OSPs like Google who are their most typical recipients will have to handle any court order they receive very carefully.[117]

The dilemma seems clear. If the removals mechanism is left largely, or at least initially, to data controllers and processors,[118] there are questions regarding appropriate transparency, as well as an accumulation of power in the wrong hands, and a lack of a strong voice for the affected public at large.

But, if removals are left to courts, what assurances will the recipients of the court orders have that the document with which they have been presented is not a forgery? What safeguards will need to be to put in place, and who will bear their cost? The additional burden on the courts alone, even if those courts were bodies newly constituted for the purpose of adjudicating RTBF claims, would be substantial. A hybrid model that strikes an appropriate balance will be complex and challenging to get right.[119] This is an especially ripe area for further analysis,

---

113 Notices 16838340, 12886152, and 2348455; compare 1539433, 12982683, 13781781, 13833849; Volokh.

114 Chris Silver Smith, "CEO Who Forged Court Order to Get Google to Remove Defamation Faces Prison", *Search Engine Land*, November 13, 2017, https://searchengineland.com/ceo-forged-court-order-get-google-remove-defamation-faces-prison-282946.

115 Eugene Volokh, "Texas AG's Office Accuses 'reputation Management Company' of Procuring Fraudulent Libel Takedown Lawsuits", *Washington Post*, September 12, 2017, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/12/texas-ag-accuses-reputation-management-company-of-procuring-fraudulent-libel-takedown-lawsuits/; Eugene Volokh, "Arizona Bar Accuses Libel Lawyers of Suing Fake Defendants - Volokh Conspiracy", *Reason.com*, January 29, 2018, https://reason.com/volokh/2018/01/29/arizona-bar-accuses-lawyers-of-suing-fak.

116 Chris Silver Smith, "Paradigm Shift: Has Google Suspended Defamation Removals?" *Search Engine Land*, December 30, 2016, http://searchengineland.com/paradigm-shift-google-suspends-defamation-removals-266222.

117 Chris Silver Smith, "Google Thaws (a Little) on Defamation Cases", *Search Engine Land*, March 20, 2017, https://searchengineland.com/google-thaws-little-defamation-cases-271612; "Paradigm Shift".

118 "Right to Erasure ('Right to Be Forgotten'), Art. 17", *General Data Protection Regulation (GDPR)*, accessed July 6, 2018, https://gdpr-info.eu/art-17-gdpr/.

119 "Right to Erasure (Right to Be Forgotten) under the GDPR: The Danger of 'Rewriting History' or the Individual's Chance to Leave the Past behind - Ketevan Kukava", *Inforrm's Blog* (blog), May 31, 2018, https://inforrm.org/2018/05/31/right-to-erasure-right-to-be-forgotten-under-the-gdpr-the-danger-of-rewriting-history-or-the-individuals-chance-to-leave-the-past-behind-ketevan-kukava/.

both in the US and the EU, given the role that local data protection authorities play in the latter jurisdiction with respect to adjudicating initially rejected requests for removal under RTBF and now the GDPR.[120]

THE FUTURE OF POSSIBLE "RIGHT TO BE FORGOTTEN" LEGAL REGIMES IN COUNTRIES CURRENTLY WITHOUT ONE

The official existence, since 2014, of a "right to be forgotten" in the EU, the "right of erasure" in the GDPR, and the robust development of the corresponding official mechanisms for requesting and acting on the removal of online materials has radically and permanently changed the nature of the debate surrounding instantiating a similar regime in other countries, or globally. The Overton Window[121] has been moved substantially toward a general acceptance of some form of an RTBF. Even in the United States, lawmakers who previously dismissed any discussion of an RTBF as incompatible with US concepts of freedom of speech have changed their minds.[122] However, as is already being seen in the heated debates over the appropriate scope and scale of de-indexing, and the reach of a particular country's court orders to a global online intermediary,[123] the differing cultural and legal norms in countries or jurisdictions around the world will likely prevent the easy adoption of a mutually agreed-upon removal framework.

Any RTBF regimen in the United States will have to exist in harmony with the centuries of jurisprudence surrounding that country's 1st Amendment,[124] although some of the most

---

120 "What Are Data Protection Authorities (DPAs)?"; "Art. 17 GDPR"; "Complaints", *European Data Protection Supervisor*, accessed September 2, 2018, https://edps.europa.eu/data-protection/our-role-supervisor/complaints_en.

121 "The Overton Window. A model of policy change", *Mackinac Center for Public Policy,* accessed May 29, 2018, http://www.mackinac.org/overtonwindow.

122 Rebecca Heilweil, "How Close Is An American Right-To-Be-Forgotten?", *Forbes*, March 4, 2018, accessed June 28, 2018, https://www.forbes.com/sites/rebeccaheilweil1/2018/03/04/how-close-is-an-american-right-to-be-forgotten/; Amy Gajda, "Privacy, Press, and the Right to Be Forgotten in the United States", *Washington Law Review 201, Tulane Public Law Research Paper n.º 18-2* (2018), https://ssrn.com/abstract=3144077; Gregory Korte y David Jackson, "Trump puts federal libel law on 2018 agenda, escalating complaints against media", *USA Today*, January 10, 2018, accessed June 28, 2018, https://www.usatoday.com/story/news/politics/2018/01/10/trump-puts-federal-libel-law-2018-agenda-escalates-complaints-against-media-putting-federal-libel-la/1020913001/.; US technology lobbyist, personal communication, 2014 (anonymous, Chatham House rules).

123 "Google Inc v. Equustek Solutions Inc.", *Global Freedom of Expression Columbia University*, accessed May 29, 2018, https://globalfreedomofexpression.columbia.edu/cases/equustek-solutions-inc-v-jack-2/; "Google Inc. v. Equustek Solutions Inc"; "Google v. Equustek", *Electronic Frontier Foundation*, October 24, 2016, https://www.eff.org/cases/google-v-equustek; "Google v. Equustek - ND Cal Order Granting Preliminary Injunction", *Electronic Frontier Foundation*, November 2, 2017, https://www.eff.org/document/google-v-equustek-nd-cal-order-granting-preliminary-injunction; "French Court Refers 'right to Be Forgotten' Dispute to Top EU Court", *Reuters*, July 19, 2017, https://www.reuters.com/article/us-google-litigation/french-court-refers-right-to-be-forgotten-dispute-to-top-eu-court-idUSKBN1A41AS.

124 Agnes Callamard, "Are Courts Re-Inventing Internet Regulation?", *International Review of Law, Computers & Technology* 31, n.º 3 (2017): 323-339, https://doi.org/10.1080/13600869.2017.1304603.; Robert G. Larson III, "Forgetting the First Amendment: How Obscurity-Based Privacy and a Right to Be Forgotten Are Incompatible with Free Speech", *Communication Law and Policy* 18, n.º 1 (2013): 91-120, https://doi.org/10.1080/1081

recent US Supreme Court rulings on that topic have caused legal analysts and commentators to point out that many of the current doctrine's roots are actually quite shallow.[125] Many other countries are signatories to the Universal Declaration of Human rights, whose Article 19 specifically enumerates a freedom to "seek, receive and impart information and ideas through any media",[126] meaning that in theory a "right to be forgotten" must successfully balance itself with those interests. The EUCJ obviously believes itself to have done so with the *Costeja* ruling, and while there are some who disagree,[127] subsequent analyses of various subsets of RTBF and GDPR request data by Google[128] and Reputation.com[129] among others, reveal that any of these concerns were exaggerated or unjustified.[130]

Countries that have experienced radical upheaval or regime change, especially recently, may have a vested cultural interest[131] in preventing influential politicians and other figures from sanitising or otherwise obscuring their role.[132] On the other hand, those same countries may well also want to be able to move forward without being anchored by a dark or unpleasant past, and it is not at all clear where the balance between truth and reconciliation commissions[133] and a right to be forgotten is to be struck, nor in whose favour. Finally, autocratic or dictatorial regimes may well seek to weaponise or otherwise misuse removal tools to censor political opponents, critics, and dissidents.[134] This entire discussion must take place within the

---

1680.2013.746140; Eugene Volokh, "Freedom of Speech, Information Privacy, and the Troubling Implications of a Right to Stop People from Speaking About You", *Stanford Law Review 52*, (2000), http://dx.doi.org/10.2139/ssrn.200469; Craig Timberg y Sarah Halzack, "Right to Be Forgotten vs. Free Speech", *Washington Post*, May 14, 2014, https://www.washingtonpost.com/business/technology/right-to-be-forgotten-vs-free-speech/2014/05/14/53c9154c-db9d-11e3-bda1-9b46b2066796_story.html.

125 David A. Graham, "The Age of Reverse Censorship", *The Atlantic*, June 26, 2018, https://www.theatlantic.com/politics/archive/2018/06/is-the-first-amendment-obsolete/563762/. ("The shallow roots of today's traditions show how easily the recent gains could be erased").

126 United Nations, "Universal Declaration of Human Rights", October 6, 2015, http://www.un.org/en/universal-declaration-human-rights/; Adam Thierer, "The Conflict Between a 'Right to Be Forgotten' & Speech / Press Freedoms", *Technology Liberation Front*, November 5, 2010, https://techliberation.com/2010/11/05/the-conflict-between-a-right-to-be-forgotten-speech-press-freedoms/.

127 Unesco, "Keystones to Foster Inclusive Knowledge Societies: Access to Information and Knowledge, Freedom of Expression, Privacy and Ethics on a Global Internet" (2015); Andrew Neville, "Is It a Human Right to Be Forgotten? Conceptualizing the World View", *Santa Clara Journal of International Law 15*, n.º 2 (2017): 17, https://digitalcommons.law.scu.edu/scujil/vol15/iss2/2.

128 Bertram et al., "Three Years of the Right to Be Forgotten".

129 "Forget.Me".

130 "Forget.Me". ("Invasion of privacy" category represents 63% of the URLs submitted; "Google refuses 56% of the requests"; "Press Websites are barely affected by the right to be forgotten".)

131 Richard Carver y Article 19 (Organization), *"Who Wants to Forget?": Truth and access to information about past human rights violations* (London: Article 19, 2000), http://books.google.com/books?id=9MacAAAAMAAJ.

132 Diana Gómez, "Colombia Must Rethink the Role of Truth Commissions to Secure the Rights of Victims of Conflict", *LSE Latin America and Caribbean* (blog), March 6, 2018, http://blogs.lse.ac.uk/latamcaribbean/2018/03/06/colombia-must-rethink-the-role-of-truth-commissions-to-secure-the-rights-of-victims-of-conflict/.

133 Lilia Blaise, "Tunisia Truth Commission Brings One Court Case in Four Years", *The New York Times*, June 7, 2018, https://www.nytimes.com/2018/06/06/world/middleeast/tunisia-torture-trial-zine-el-abidine-ben-ali.html.

134 "Ares Rights retira de la *web* aquello que incomoda al Gobierno", *El Comercio*, October 28, 2013, accessed June 28, 2018, http://www.elcomercio.com/blogs/desde-la-tranquera/ares-rights-retira-de-web.html; Alexandra Ellerbeck, "How U.S. Copyright Law Is Being Used to Take down Correa's Critics in Ecuador", *Committee to*

context of a theoretically and, at least potentially, global Internet. The democratisation of publication and the lowering of nearly all barriers to entry have given a networked individual access to unprecedented levers of power. It is not going too far to say that humanity's social norms regarding the diffusion, accessibility, and permanence of information have not yet adapted appropriately to digitisation and networked connectivity.[135] Our inherent cognitive biases,[136] especially those related to memory and reputation, may well never be able to do so. Humanity's traditional behaviours and inherent frailties and biases may mean that no reconciliation between these various interests is ever possible. It may be that a fully functional and global RTBF will require the effective crippling or deliberate shackling of technology or more likely, a "splinternet"[137] that belies the original bright promise of the Web.[138]

It can be reasonably argued that the DMCA is a de facto global removal regime.[139] Although copyright law and its enforcement are still territorial, the Berne Convention[140] requires foreign

---

Protect Journalists, January 21, 2016, accessed June 28, 2018, https://cpj.org/blog/2016/01/how-us-copyright-law-is-being-used-to-take-down-co.php; Maira Sutton, "State Censorship by Copyright? Spanish Firm Abuses DMCA to Silence Critics of Ecuador's Government", *Electronic Frontier Foundation*, May 15, 2014, https://www.eff.org/deeplinks/2014/05/state-censorship-copyright-spanish-firm-abuses-DMCA; Mike Masnick, "Ecuador Continues To Use US Copyright Law To Censor Critics", *Techdirt*, January 28, 2016, accessed June 28, 2018, https://www.techdirt.com/articles/20160126/18061933438/ecuador-continues-to-use-us-copyright-law-to-censor-critics.shtml; Daniel Nazer, "Copyright, The First Wave of Internet Censorship", *Electronic Frontier Foundation*, January 18, 2018, https://www.eff.org/deeplinks/2018/01/copyright-first-wave-internet-censorship; Lawrence Lessig, "Copyright and Politics Don't Mix", *The New York Times*, October 20, 2008, https://www.nytimes.com/2008/10/21/opinion/21lessig.html; Nazer, "Copyright, The First Wave of Internet Censorship".

135 Danah Boyd, *It's Complicated: The Social Lives of Networked Teens* (New Haven: Yale University Press, 2014); Erik Huizer *et al*., "A Brave New World: How the Internet Affects Societies", *Internet Society*, July 25, 2017, accessed June 28, 2018, https://www.internetsociety.org/resources/doc/2017/a-brave-new-world-how-the-internet-affects-societies/.

136 Jeff Desjardins, "Every Single Cognitive Bias in One Infographic", *Visual Capitalist*, September 25, 2017, http://www.visualcapitalist.com/every-single-cognitive-bias/.

137 Clyde Wayne Crews Jr., "One Internet Is Not Enough", *Cato Institute*, April 11, 2001, https://www.cato.org/publications/techknowledge/one-internet-is-not-enough; "Survey of Government Internet Filtering Practices Indicates Increasing Internet Censorship", *Berkman Klein Center*, May 18, 2007, accessed May 31, 2018, https://cyber.harvard.edu/newsroom/first_global_filtering_survey_released; Sascha Meinrath, "The Future of the Internet: Balkanization and Borders", *Time*, October 11, 2013, accessed May 31, 2018, http://ideas.time.com/2013/10/11/the-future-of-the-internet-balkanization-and-borders/; Derek Thompson, "The Fall of the Internet and the Rise of the 'Splinternet'", *The Atlantic*, March 8, 2010, https://www.theatlantic.com/business/archive/2010/03/the-fall-of-the-internet-and-the-rise-of-the-splinternet/37181/; "The Splinternet", Stephen Lewis, "The Splinternet" *Doc Searls Weblog (blog),* December 16, 2008, http://blogs.harvard.edu/doc/2008/12/16/the-splinternet/; A. Michael Spence, "Preventing the Balkanization of the Internet", *Council on Foreign Relations*, March 28, 2018, accessed June 28, 2018, https://www.cfr.org/blog/preventing-balkanization-internet; Jeff John Roberts, "The GDPR and Our Balkanized Internet: What We Lost", *Fortune*, May 26, 2018, accessed June 28, 2018, http://fortune.com/2018/05/26/gdpr-internet/; Tim Maurer y Robert Morgus, "Stop Calling Decentralization of the Internet 'Balkanization'", *Slate*, February 19, 2014, http://www.slate.com/blogs/future_tense/2014/02/19/stop_calling_decentralization_of_the_internet_balkanization.html.

138 John Perry Barlow, "A Declaration of the Independence of Cyberspace", *Electronic Frontier Foundation*, January 20, 2016, https://www.eff.org/cyberspace-independence.

139 Maira Sutton, "Copyright Law as a Tool for State Censorship of the Internet", *Electronic Frontier Foundation*, December 3, 2014, https://www.eff.org/deeplinks/2014/12/copyright-law-tool-state-internet-censorship. "The DMCA has become the default template for tech companies to respond to copyright infringement notices. Since many major tech companies have offices in the US, they must comply with US law".

140 "Berne Convention for the Protection of Literary and Artistic Works: Berne Convention for the Protection of

copyright holders to be given local resident status when enforcing their rights. Since a majority, or at least a plurality, of the Internet's largest companies originate in the United States,[141] under the United States' Digital Millennium Copyright Act (DMCA) [CITE; harmonisation] a DMCA request sent to Google Search, for instance, will achieve the practical global removal, via the de-indexing of that content.[142] However, there are already several widely acknowledged problems with the DMCA, including the sheer scale at which it now operates,[143] with questionable success, false positives,[144] broad-brush automation of the process,[145] obvious errors of inclusion,[146] a lack of opportunity for recipients to challenge claims prior to removal of the material in question, and deliberate[147] or even fraudulent misuse.[148] All of this has led to widespread calls for reform from stakeholders on all sides,[149] and US Congress recently held a series

---

Literary and Artistic Works (as Amended on September 28, 1979) (Authentic Text)", *WIPO World Intellectual Property Organization*, accessed June 28, 2018, http://www.wipo.int/wipolex/en/details.jsp.

141 Chinese companies such as TenCent, Weibo, Alibaba and Baidu, to name only a few, are notable exceptions to any generalisation about size, but existing in a separate legal and regulatory environment". Stef W. Kight, "The Companies That Dominate Chinese Internet", *Axios*, July 22, 2017, accessed May 31, 2018, https://www.axios.com/the-companies-that-dominate-chinese-internet-1513304333-56daf484-5987-4991-a127-46f87357bf40.html.

142 Sutton, "Copyright Law as a Tool for State Censorship of the Internet". ("The DMCA has become a global tool for censorship").

143 Charlotte Hassan, "Google's DMCA Takedown Notices Quadruple In Just Two Years. What's being done?", *Digital Music News (blog),* June 21, 2016, https://www.digitalmusicnews.com/2016/06/21/googles-dmca-takedown-notices-quadruple-two-years/.

144 Ben Depoorter y Robert Kirk Walker, "Copyright False Positives", *Notre Dame Law Review* 89, n.º 1 (2013): 43.

145 Mike Masnick, "DMCA's Notice And Takedown Procedure Is A Total Mess, And It's Mainly Because of Bogus Automated Takedowns", *Techdirt*, March 30, 2016, accessed May 31, 2018, https://www.techdirt.com/articles/20160330/01583234053/dmcas-notice-takedown-procedure-is-total-mess-mainly-because-bogus-automated-takedowns.shtml; Eric Perrott, "False DMCA Takedown Notices: Ninth Circuit Holds That Copyright Owners Must Consider Fair Use Before Issuing Take-Down Notices", *Gerben Law Firm PLLC (blog),* accessed May 31, 2018, https://www.gerbenlaw.com/blog/false-dmca-takedown-notices-ninth-circuit-holds-that-copyright-owners-must-consider-fair-use-before-issuing-take-down-notices/.

146 Alex Pasternack, "NASA's Mars Rover Crashed Into a DMCA Takedown", *Motherboard,* July 1, 2014, http://motherboard.vice.com/blog/nasa-s-mars-rover-crashed-into-a-dmca-takedown; Ryan Singel, "YouTube Flags Democrats' Convention Video on Copyright Grounds", *WIRED*, September 5, 2012, http://www.wired.com/2012/09/youtube-flags-democrats-convention-video-on-copyright-grounds/; Geeta Dayal, "The Algorithmic Copyright Cops: Streaming Video's Robotic Overlords", *WIRED*, September 6, 2012, accessed May 31, 2018, https://www.wired.com/2012/09/streaming-videos-robotic-overlords-algorithmic-copyright-cops/.

147 Jonathan Bailey, "The Worst False DMCA Notice I've Seen", *Plagiarism Today*, March 6, 2018, https://www.plagiarismtoday.com/2018/03/06/the-worst-false-dmca-notice-ive-seen/; Copyright and Liability, "Another 512(f) Claim Fails-Tuteur v. Crosley-Corcoran".

148 Mostafa El Manzalawy, "Data from the Lumen Database Highlights How Companies Use Fake Websites and Backdated Articles to Censor Google's Search Results", *Lumen Blog*, August 24, 2017, accessed May 31, 2018, https://www.lumendatabase.org/blog_entries/800.

149 "Artists Urging Reforms of the DMCA Safe Harbor: 'Our Culture Is At Stake'", *JIPEL Blog (blog)*, March 24, 2017, accessed May 31, 2018, https://blog.jipel.law.nyu.edu/2017/03/artists-urging-reforms-of-the-dmca-safe-harbor-our-culture-is-at-stake/; Devlin Hartline, "Endless Whack-A-Mole: Why Notice-and-Staydown Just Makes Sense", *Center for the Protection of Intellectual Property (blog)*, January 14, 2016, https://cpip.gmu.edu/2016/01/14/endless-whack-a-mole-why-notice-and-staydown-just-makes-sense/; Elliot Harmon, "'Notice-and-Stay-Down' Is Really 'Filter-Everything'", *Electronic Frontier Foundation*, January 21, 2016, https://www.eff.org/deeplinks/2016/01/notice-and-stay-down-really-filter-everything.

of hearings[150] to examine to what extent the DMCA should be revised. Given this level of tumult, developing an RTBF-analogous removals regime in the United States predicated on existing copyright mechanisms seems problematic at best, especially given that the material most commonly the subject of RTBF removal requests is either journalistic or in the critical expression of individuals wherein no copyright has been or can be asserted.[151] Not only that, but also, "[T]he trouble with comparing copyright law to privacy, though, is that the United States and Europe broadly agree on what constitutes copyrighted content, but the boundaries of private information are far more nebulous".[152]

With that in mind, it may well be that the first mover from a regulatory perspective will, by default, largely set the tone and terms for other future laws.[153] Consider, as just one example in this space, Facebook's announcement, which came shortly after Mark Zuckerberg testifying before the US Congress with respect to the Cambridge Analytica scandal, that Facebook will extend EU-style GDPR privacy controls to everyone, not just EU citizens.[154]

Use of copyright (or other existing means for takedown), rather than a new RTBF, will have several potential categories of outcome; some positive, some negative, some yet to be determined. First, it seems plausible to surmise that the more effective the repurposing of an existing removal regime proves to be in a given country, the less pressure there will be to create a wholly separate RTBF-analogous one, whether via judicial interpretation of existing law or by drafting a new law. To give a specific example, if it proved to be the case that individuals wishing to be "forgotten" could accomplish all that they wanted by filing DMCA notices or court orders for removal, then they simply would. We would then be having a discussion about "de facto" RTBF, or the "copyright safety valve"[155] for reputation management, or perhaps celebrating the expansive inclusiveness of existing privacy and defamation law.

Another mechanism for removal that is already in use and gaining traction is a reliance on the Terms of Use of the most popular private platforms, especially social media. See, for example, the work of OnlineCensorship.org[156] in trying to document the true extent of these private mechanism removals. A full discussion of the implications of a reliance on private ordering as a mechanism for the removal of online content is beyond the scope of this paper, but suffice it to say that there are both advantages and disadvantages to relying on companies to police themselves rather than relying on a comprehensive single legal or regulatory regime;

---

150 U.S. Copyright Office, "Congressional Hearings and Statements to Congress", accessed May 31, 2018, https://www.copyright.gov/laws/hearings/.

151 "Search Removals under European Privacy Law – Google Transparency Report."

152 Manjoo, "'Right to Be Forgotten' Online Could Spread".

153 Other historical examples of first or disproportionately powerful entities movers setting general policy in the US include California auto regulations and Texas textbooks.

154 Sarah Jeong, "Zuckerberg Says Facebook Will Extend European Data Protections Worldwide - Kind Of", *The Verge*, April 11, 2018, https://www.theverge.com/2018/4/11/17224492/zuckerberg-facebook-congress-gdpr-data-protection.

155 Krista L. Cox, "The First Amendment and Copyright Law: Can't We All Just Get Along?" *Above the Law*, accessed June 28, 2018, https://abovethelaw.com/2017/08/the-first-amendment-and-copyright-law-cant-we-all-just-get-along/.

156 "Onlinecensorship.Org". ("We're collecting reports from users in an effort to shine a light on what content is taken down, why companies make certain decisions about content, and how content takedowns are affecting communities of users around the world".)

including, on the one hand, greater flexibility and theoretical responsiveness to stakeholders, but on the other, the potential for a complete lack of transparency or accountability, as well as for "capture" by economically powerful stakeholders at the expense of individuals or the public.[157] *The lack of explicit guidance for search engines in the immediate aftermath of the Costeja ruling, combined with how directly they were affected and the role they were expected to play provided an unusual opportunity for the development of a public-private hybrid regulatory regime, with an unusually high degree of autonomy for the private actors in question*.[158]

However, it already seems fairly obvious that existing mechanisms are not completely satisfying public demand. The "street finding its own uses for things"[159] notwithstanding, would-be users criticize the inadequacies of relying on laws and mechanisms not designed for their new and unforeseen purpose;[160] and the cognoscenti concern about the corrupting effect unintended uses might have on an existing law's ability to do what it was, in fact, designed to do.[161] As Eugene Volokh has put it "Any system attracts parasites".[162] And, by contrast, the more copyright law becomes inappropriately expanded, and misunderstood/misused, the more effective copyright proves to be at the removal of material not originally envisioned as being within the purview of copyright's incentive structure. So, there are, and will continue to be, countervailing pressures against the continued expansion of copyright's or other regimes removal tools, which in turn will drive the adoption of other, especially more targeted, removal regimes.

Another foreseeable downstream effect of the expansion of other existing tools will bear increases in the costs of compliance with one or more regimes, whether in terms of execution, oversight, or consequences. The falsified court orders identified by Eugene Volokh offer a perfect case study for this. Preliminary estimates by Professor Volokh imply that as many as 10% of the court orders sent to Google for the removal of online material are in some way questionable.[163] Assuming those numbers are reasonably accurate and will continue in the future, the implications for effective oversight by Google or other court order recipients are substantial, if only from the perspective of resource allocation to monitoring costs. On the side of recipients, are they to now have to individually verify the provenance of any order instead of presuming validity?

---

157 "Intermediary Liability in the United States", *Publixphere*, accessed June 28, 2018, https://publixphere.net/i/noc/page/OI_Case_Study_Intermediary_Liability_in_the_United_States.Private. "Ordering to Respond to Copy right Concerns: YouTube's ContentID Program" by Adam Holland, a case study within the larger paper "Intermediary Liability in the United States" (2014); "Network of Centers – Publixphere", accessed June 28, 2018, https://publixphere.net/i/noc/page/OI_Case_Study_Intermediary_Liability_in_the_United_States.

158 Chenou and Radu, "The 'Right to Be Forgotten'".

159 William Gibson, *Burning Chrome* (Harper Collins, 2014).

160 Mike Masnick, "The DMCA should not be an all purpose tool for taking down content; and it's especially bad for harassment", *Techdirt*, May 27, 2016, accessed June 27, 2018, https://www.techdirt.com/articles/20160527/01241334560/dmca-should-not-be-all-purpose-tool-taking-down-content-espeically-bad-harassment.shtml.

161 Tim Cushing, "IFPI Nuking Twitch Streamers Accounts For Playing Background Music", *Techdirt*, June 25, 2018, accessed June 28, 2018, https://www.techdirt.com/articles/20180622/19015940094/ifpi-nuking-twitch-streamers-accounts-playing-background-music.shtml. ("Just some more "because it's there" DMCA enforcement that engenders more contempt for copyright holders".)

162 Volokh, Eugene, presentation slide at RightsCon 2018.

163 "Remedies for Cyber Defamation: Criminal Libel, Anti-Speech Injunctions, Forgeries, Frauds, and More", *Berkman Klein Center*.

If so, how? Given the patchwork quilt of electronic court records in the United States, to say nothing of the global, it seems clear that to satisfactorily verify each court order would require the full attention of a human being for some period of time, to call courthouses or email judges, who themselves are already overworked. The consequences of ignoring a genuine court order are too great for even a recipient the size of Google to take any of them less than seriously. So this simply cannot scale. On the side of the senders of court orders, as utopian a vision of civic engagement as it might be to imagine that any citizen could easily obtain a court order for the removal of online material, when such an order is legally merited, it is just that: utopian. The costs in both money and time of engaging with the legal system will put court orders out of the reach of many, if not most, relegating that removal tool to the wealthy or legally savvy, and thereby rendering it an inappropriate tool for general removal of objectionable material. Something more universal is to be desired.

It seems most likely then, that, at least in the United States, the country's robust tradition of federalism and legislative experimentation at state and even local level[164] will lead to a patchwork of state laws[165] that attempt to create some form of an RTBF, with varied success but that, given the obstacles a true national RTBF law would have to overcome, any specific RTBF US federal legislation is a long way away.[166]

BIBLIOGRAPHY

Jurisprudence, legalization, and policies

1. Court of Justice of the European Union. "(Press Release n.º 70/14). An internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties". May 13, 2014. https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf.
2. European Commission. "What Are Data Protection Authorities (DPAs)?" s.f., https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-are-data-protection-authorities-dpas_en.

---

164 U.S. Supreme Court, "New State Ice Co. v. Liebmann, 285 U.S. 262 (1932)", accessed June 28, 2018, https://supreme.justia.com/cases/federal/us/285/262/case.html.

165 Eugene Volokh, "N.Y. Bill Would Require People to Remove 'Inaccurate,' 'Irrelevant,' 'Inadequate' or 'Excessive' Statements about Others", *Washington Post*, March 15, 2017, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/15/n-y-bill-would-require-people-to-remove-inaccurate-irrelevant-inadequate-or-excessive-statements-about-others/; Alan Evans, "IMDb Sues California to Overturn Law Forcing Them to Remove Actors' Ages", *The Guardian*, November 11, 2016, https://www.theguardian.com/film/2016/nov/11/imdb-sues-california-to-overturn-law-forcing-them-to-remove-actors-ages?CMP=twt_a-film_b-gdnfilm; Eugene Volokh, "California Supreme Court Will Decide: Can Court Order Yelp to Take down Defendant's Post, Though Yelp Wasn't Even a Party to the Lawsuit?", *Washington Post*, September 21, 2016, accessed April 20, 2017, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/09/21/california-supreme-court-will-decide-can-court-order-yelp-to-take-down-defendants-post-though-yelp-wasnt-even-a-party-to-the-lawsuit/.

166 Kate Tummarello, "We Won't Let You Forget It: Why We Oppose French Attempts to Export the Right To Be Forgotten Worldwide", *Electronic Frontier Foundation*, November 29, 2016, https://www.eff.org/deeplinks/2016/11/we-wont-let-you-forget-it-why-we-oppose-french-attempts-export-right-be-forgotten.

3. Jian Zhang v. Baidu.com Inc., 10 F. Supp. 3d 433, 435 S.D.N.Y. 2014.

4. Search King Inc. v. Google Tech., Inc., n.º CIV-02-1457-M, 2003 WL 21464568, at *1 W.D. Okla. May 27, 2003.

5. The Court of Justice of the European Union. (Google Spain SL y Google Inc. vs. Agencia Española de Protección de Datos [AEPD] y Mario Costeja González). C-131/12. May 13, 2014. http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065.

6. The European Parliament and of the Council. "Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data Directive 95/46/EC, Pub. L. No. 31995L0046, OJ L 281". October 24, 1995. http://data.europa.eu/eli/dir/1995/46/oj/eng.

7. The Supreme Court of Canada. "Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 SCR 824". https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do.

8. United Nations. "Universal Declaration of Human Rights". October 6, 2015, http://www.un.org/en/universal-declaration-human-rights/.

9. U.S. Copyright Office. "Congressional Hearings and Statements to Congress", accessed May 31, 2018. https://www.copyright.gov/laws/hearings/.

10. U.S. Supreme Court. "New State Ice Co. v. Liebmann, 285 U.S. 262 (1932)". Accessed June 28, 2018. https://supreme.justia.com/cases/federal/us/285/262/case.html.

Articles

11. Ambrose, Meg Leta and Jef Ausloos. "The Right to Be Forgotten Across the Pond". *Journal of Information Policy* 3 (2013): 1-23. https://doi.org/10.5325/jinfopoli.3.2013.0001.

12. Boon Seng, Daniel Kiat. "'Who Watches the Watchmen?'". *An Empirical Analysis of Errors in DMCA Takedown Notices* (2015). https://papers.ssrn.com/abstract=2563202.

13. Bradford Bepko, Arminda. "Public availability or practical obscurity: the debate over public access to court records on the internet". *New York Law School Law Review* 49, (2005): 26.

14. Bode, Leticia y Meg Leta Jones. "Ready to Forget: American Attitudes toward the Right to Be Forgotten". *The Information Society* 33, n.º 2 (2017): 76-85. https://doi.org/10.1080/01972243.2016.1271071.

15. Callamard, Agnes. "Are Courts Re-Inventing Internet Regulation?" *International Review of Law, Computers & Technology* 31, n.º 3 (2017): 323-339. https://doi.org/10.1080/13600869.2017.1304603.

16. Carter, Edward L. "Argentina's Right to Be Forgotten". *Emory International Law Review* 27, n.º 1 (2013). http://law.emory.edu/eilr/content/volume-27/issue-1/recent-developments/argentinas-right-to-be-forgotten.html.

17. Chenou, Jean-Marie and Roxana Radu. "The 'Right to Be Forgotten': Negotiating Public and Private Ordering in the European Union". *Business & Society* (2017). https://doi.org/10.1177/0007650317717720.

18. Christakis, Nicholas A. and James H. Fowler, "The Spread of Obesity in a Large Social Network over 32 Years". *The New England Journal of Medicine* 357, n.º 4 (2007): 370-379. https://doi.org/10.1056/NEJMsa066082.

19. Citron, Danielle Keats and Mary Anne Franks. "Criminalizing revenge porn". *Wake Forest Law Review* 49, n.º 345 (2014): 40.

20. de Baets, Antoon. "A Historian's View on the Right to Be Forgotten". *International Review of Law, Computers & Technology* 30, n.º 1-2 (2016): 57-66. https://doi.org/10.1080/13600869.2015.1125155; Warren y Brandeis, "The Right to Privacy".

21. Depoorter, Ben and Robert Kirk Walker. "Copyright False Positives". *Notre Dame Law Review* 89, n.º 1 (2013): 43.

22. Dulong de Rosnay, Melanie and Andres Guadamuz. "Memory Hole or Right to Delist? Implications of the Right to be forgotten for Web Archiving". *RESET*, n.º 6 (2017). https://doi.org/10.4000/reset.807.

23. Gajda, Amy. "Privacy, Press, and the Right to Be Forgotten in the United States". *Washington Law Review 201, Tulane Public Law Research* Paper n.º 18-2, (2018). https://ssrn.com/abstract=3144077.

24. Gratton, Eloise and Jules Polonetsky. "Droit À L'Oubli: Canadian Perspective on the Global 'Right to Be Forgotten' Debate". *Colorado Technology Law Journal* 15, n.º 2 (2017). https://ssrn.com/abstract=2944012.

25. Hoffman, David, Paula Bruening and Sophia Carter. "The Right to Obscurity: How We Can Implement the Google Spain Decision". *North Carolina Journal of Law & Technology* 17, n.º 3 (2016). http://ncjolt.org/the-right-to-obscurity/.

26. Larson III, Robert G. "Forgetting the First Amendment: How Obscurity-Based Privacy and a Right to Be Forgotten Are Incompatible with Free Speech". *Communication Law and Policy* 18, n.º 1 (2013): 91-120. https://doi.org/10.1080/10811680.2013.746140.

27. Lee, Edward. "The Right to Be Forgotten v. Free Speech". *I/S: A Journal of Law And Policy for the Information Society* 12, n.º 1 (2015): 28.

28. Lindsay, David. "The 'Right to Be Forgotten' by Search Engines under Data Privacy Law: A Legal Analysis of the Ruling". *Journal of Media Law* 6, n.º 2 (2015): 159-179. https://doi.org/10.5235/17577632.6.2.159.

29. Neville, Andrew. "Is It a Human Right to Be Forgotten? Conceptualizing the World View". *Santa Clara Journal of International Law* 15, n.º 2 (2017): 17. https://digitalcommons.law.scu.edu/scujil/vol15/iss2/2.

30. Politou, Eugenia, Efthimios Alepis and Constantinos Patsakis. "Forgetting Personal Data and Revoking Consent under the GDPR: Challenges and Proposed Solutions". *Journal of Cybersecurity*, n.º 0 (2018), https://doi.org/10.1093/cybsec/tyy001.

31. Rengel, Alexandra. "Privacy as an International Human Right and the Right to Obscurity in Cyberspace". *Groningen Journal of International Law* 2, n.º 2 (2014), https://ssrn.com/abstract=2599271.

32. Schauer, Frederick. "The Exceptional First Amendment". *KSG Working Paper*, n.º RWP05-021 (2005). https://papers.ssrn.com/abstract=668543.

33. Volokh, Eugene. "Freedom of Speech, Information Privacy, and the Troubling Implications of a Right to Stop People from Speaking About You". *Stanford Law Review* 52, (2000). http://dx.doi.org/10.2139/ssrn.200469.

34. Volokh, Eugene y Donald M. Falk, "Google: First Amendment Protection for Search Engine Search Results", *Journal of Law, Economics & Policy* 8 (2012 2011): 883-900.

35. Volokh, Eugene. "Revised amicus curiae brief of Eugene Volokh in support of appellant". *Santa Clara Law Digital Commons* (May 18, 2017), 76.

36. Warren, Samuel D. y Louis D. Brandeis. "The Right to Privacy". *Harvard Law Review* 4, n.º 5 (December 15, 1890): 193-220.

37. Weber, Rolf H. "The Right to Be Forgotten More Than a Pandora's Box?", *JIPITEC* 2, n.º 2 (2011). http://www.jipitec.eu/issues/jipitec-2-2-2011/3084.

Doctrine

38. Austin, John L. and John Langshaw Austin, *How to Do Things with Words* (Harvard University Press, 1975).

39. Boyd, Danah. *It's Complicated: The Social Lives of Networked Teens* (New Haven: Yale University Press, 2014).

40. Carver, Richard and Article 19 (Organization). *"Who Wants to Forget?": Truth and access to information about past human rights violations* (London: Article 19, 2000). http://books.google.com/books?id=9MacAAAAMAAJ.

41. Gibson, William. *Burning Chrome* (Harper Collins, 2014).

42. Mayer-Schönberger, Viktor. Delete. *The Virtue of Forgetting in the Digital Age* (Paperback, 2011), accessed May 29, 2018. https://press.princeton.edu/titles/9436.html.

43. Orwell, George. *1984* (New York: Houghton Mifflin Harcourt Publishing Company, 1983).

The media, blogs, and Web Pages

44. Arthur, Charles. "Naked Celebrity Hack: Security Experts Focus on iCloud Backup Theory". *The Guardian*, September 1, 2014. https://www.theguardian.com/technology/2014/sep/01/naked-celebrity-hack-icloud-backup-jennifer-lawrence.

45. Ausloos, Jeff. "European Court Rules against Google, in Favour of Right to Be Forgotten". *Media Policy Project (blog)*, May 13, 2014. http://blogs.lse.ac.uk/mediapolicyproject/2014/05/13/european-court-rules-against-google-in-favour-of-right-to-be-forgotten/.

46. Bailey, Jonathan. "The Worst False DMCA Notice I've Seen". *Plagiarism Today (blog)*, March 6, 2018. https://www.plagiarismtoday.com/2018/03/06/the-worst-false-dmca-notice-ive-seen/.

47. Ball, James. "EU's Right to Be Forgotten: Guardian Articles Have Been Hidden by Google". *The Guardian*, July 2, 2014. http://www.theguardian.com/commentisfree/2014/jul/02/eu-right-to-be-forgotten-guardian-google.

48. Ball, James. "Google Admits to Errors over Guardian 'right to be Forgotten' Link Deletions". *The Guardian*, July 10, 2014. http://www.theguardian.com/technology/2014/jul/10/google-admits-errors-guardian-right-to-be-forgotten-deletions.

49. Bertram, Theo et al. "Three Years of the Right to Be Forgotten". *Elie Bursztein's site*, February 26, 2018. https://www.elie.net/publication/three-years-of-the-right-to-be-forgotten.

50. Blaise, Lilia. "Tunisia Truth Commission Brings One Court Case in Four Years". *The New York Times*, June 7, 2018. https://www.nytimes.com/2018/06/06/world/middleeast/tunisia-torture-trial-zine-el-abidine-ben-ali.html.

51. Bowcott, Owen y Kim Willsher. "Google's French Arm Faces Daily €1,000 Fines over Links to Defamatory Article", *The Guardian*, November 13, 2014. http://www.theguardian.com/media/2014/nov/13/google-french-arm-fines-right-to-be-forgotten.

52. Carson, Angelique. "The Responsibility of Operationalizing the Right To Be Forgotten". *iaap*, March 12, 2015, accessed June 5, 2018. https://iapp.org/news/a/the-responsibility-of-operationalizing-the-right-to-be-forgotten/.

53. Coutinho, Conrad. "The Right to Be Forgotten?" *The Columbia Science and Technology Law Review (blog)*, April 6, 2011. http://stlr.org/2011/04/06/the-right-to-be-forgotten/.

54. Cox, Krista L. "The First Amendment and Copyright Law: Can't We All Just Get Along?" *Above the Law*, August 31, 2017, accessed June 28, 2018. https://abovethelaw.com/2017/08/the-first-amendment-and-copyright-law-cant-we-all-just-get-along/.

55. Crovitz, L. Gordon. "Forget Any 'Right to Be Forgotten'". *Wall Street Journal*, November 15, 2010. https://www.wsj.com/articles/SB10001424052748704658204575611077167724217.

56. Cushing, Tim. "IFPI Nuking Twitch Streamers Accounts For Playing Background Music". *Techdirt*, June 25, accessed June 28, 2018. https://www.techdirt.com/articles/20180622/19015940094/ifpi-nuking-twitch-streamers-accounts-playing-background-music.shtml.

57. Dayal, Geeta. "The Algorithmic Copyright Cops: Streaming Video's Robotic Overlords". *WIRED* September 6, 2012, accessed May 31, 2018. https://www.wired.com/2012/09/streaming-videos-robotic-overlords-algorithmic-copyright-cops/.

58. Davis, Antigone. "The Facts: Non-Consensual Intimate Image Pilot". *Facebook Newsroom*, November 9, 2017, accessed June 29, 2018. https://newsroom.fb.com/news/h/non-consensual-intimate-image-pilot-the-facts/.

59. DMLP Staff. "Tuteur v. Crosley-Corcoran". *Digital Media Law Project*, April 29, 2013, accessed July 3, 2018, http://www.dmlp.org/threats/tuteur-v-crosley-corcoran.

60. Desjardins, Jeff. "Every Single Cognitive Bias in One Infographic". *Visual Capitalist*, September 25, 2017. http://www.visualcapitalist.com/every-single-cognitive-bias/.

61. DiResta, Renee. "How to Not Protect Your Users". *Renee DiResta (blog)*, June 8, 2016. https://medium.com/@noupside/how-to-not-protect-your-users-77d87871d716.

62. Dredge, Stuart. "Microsoft and Yahoo Responding to 'right to Be Forgotten' Requests". *The Guardian*, December 1, 2014. http://www.theguardian.com/technology/2014/dec/01/microsoft-yahoo-right-to-be-forgotten.

63. Drummond, David. "We Need to Talk about the Right to Be Forgotten". *The Guardian*, July 10, 2014. http://www.theguardian.com/commentisfree/2014/jul/10/right-to-be-forgotten-european-ruling-google-debate.

64. El Manzalawy, Mostafa. "Data from the Lumen Database Highlights How Companies Use Fake Websites and Backdated Articles to Censor Google's Search Results". *Lumen Blog (blog)*, August 24, 2017, accessed May 31, 2018. https://www.lumendatabase.org/blog_entries/800.

65. Ellerbeck, Alexandra. "How U.S. Copyright Law Is Being Used to Take down Correa's Critics in Ecuador". *Committee to Protect Journalists*, January 21, 2016, accessed el June 28, 2018. https://cpj.org/blog/2016/01/how-us-copyright-law-is-being-used-to-take-down-co.php.

66. Evans, Alan. "IMDb Sues California to Overturn Law Forcing Them to Remove Actors' Ages". *The Guardian*, November 11, 2016. https://www.theguardian.com/film/2016/nov/11/imdb-sues-california-to-overturn-law-forcing-them-to-remove-actors-ages?CMP=twt_a-film_b-gdnfilm.

67. Fleischer, Peter. "Implementing a European, Not Global, Right to be forgotten". *Google Europe Blog (blog)*, July 30, 2015. https://europe.googleblog.com/2015/07/implementing-european-not-global-right.html.

68. Geigner, Timothy. "The Premier League Kindly Requests Google De-List All Of Facebook Over Copyright Infringement Claims". *Techdirt*, May 4, 2017. https://www.techdirt.com/articles/20170501/06245137279/premier-league-kindly-requests-google-de-list-all-facebook-over-copyright-infringement-claims.shtml.

69. Goldman, Eric. "Another 512(f) Claim Fails-Tuteur v. Crosley-Corcoran". *Technology & Marketing Law Blog (blog)*, April 13, 2013. https://blog.ericgoldman.org/archives/2013/04/another_512f_cl_1.htm.

70. Goldman, Eric. "It Takes a Default Judgment to Win a 17 USC 512(f) Case-Automattic v. Steiner". *Technology & Marketing Law Blog (blog)*, March 13, 2015. https://blog.ericgoldman.org/archives/2015/03/it-takes-a-default-judgment-to-win-a-17-usc-512f-case-automattic-v-steiner.htm.

71. Gómez, Diana. "Colombia Must Rethink the Role of Truth Commissions to Secure the Rights of Victims of Conflict". *LSE Latin America and Caribbean (blog)*, March 6, 2018. http://blogs.lse.ac.uk/latamcaribbean/2018/03/06/colombia-must-rethink-the-role-of-truth-commissions-to-secure-the-rights-of-victims-of-conflict/.

72. Gonsalves, Andrea and Justin Safayeni. "Privacy Commissioner's Draft Report on a 'Right to Be de-Indexed' Is Cause for Concern". *Centre for Free Expression (blog)*, March 26, 2018. https://cfe.ryerson.ca/blog/2018/03/privacy-commissioners-draft-report-right-be-de-indexed-cause-concern.

73. Graham, David A. "The Age of Reverse Censorship". *The Atlantic*, June 26, 2018. https://www.theatlantic.com/politics/archive/2018/06/is-the-first-amendment-obsolete/563762/.

74. Grierson, Jamie. "'Right to Be Forgotten' Claimant Wants to Rewrite History, Says Google". *The Guardian*, February 27, 2018. http://www.theguardian.com/technology/2018/feb/27/right-to-be-forgotten-claimant-wants-to-rewrite-history-says-google.

75. Harmon, Elliot. "'Notice-and-Stay-Down' Is Really 'Filter-Everything'". *Electronic Frontier Foundation*, January 21, 2016. https://www.eff.org/deeplinks/2016/01/notice-and-stay-down-really-filter-everything.

76. Hartline, Devlin. "Endless Whack-A-Mole: Why Notice-and-Staydown Just Makes Sense". *Center for the Protection of Intellectual Property (blog)*, January 14, 2016, https://cpip.gmu.edu/2016/01/14/endless-whack-a-mole-why-notice-and-staydown-just-makes-sense/.

77. Hartzog, Woodrow and Evan Selinger. "Obscurity: A Better Way to Think About Your Data Than 'Privacy'". *The Atlantic*, January 17, 2013. https://www.theatlantic.com/technology/archive/2013/01/obscurity-a-better-way-to-think-about-your-data-than-privacy/267283/.

78. Hassan, Charlotte. "Google's DMCA Takedown Notices Quadruple in Just Two Years. What´s being done?", *Digital Music News (blog)*, June 21, 2016. https://www.digitalmusicnews.com/2016/06/21/googles-dmca-takedown-notices-quadruple-two-years/.

79. Heilweil, Rebecca. "How Close Is An American Right-To-Be-Forgotten?", *Forbes*, March 4, 2018, accessed June 28, 2018. https://www.forbes.com/sites/rebeccaheilweil1/2018/03/04/how-close-is-an-american-right-to-be-forgotten/.

80. Holland, Adam. "Ordering to Respond to Copyright Concerns: YouTube's ContentID Program". A case study within the larger paper "Intermediary Liability in the United States". *Network of Centers – Publixphere,* 2014. https://publixphere.net/i/noc/page/OI_Case_Study_Intermediary_Liability_in_the_United_States.

81. Huizer, Erik, et al. "A Brave New World: How the Internet Affects Societies". *Internet Society*, July 25, 2017, accessed June 28, 2018. https://www.internetsociety.org/resources/doc/2017/a-brave-new-world-how-the-internet-affects-societies/.

82. Jääskinen, Niilo. "Opinion of Advocate General, Case C-131/12 Google Spain SL Google Inc. vs. Agencia Española de Protección de Datos [AEPD] y Mario Costeja González". *InfoCuria - Case-law of the Court of Justice*. (2013). http://curia.europa.eu/juris/document/document.jsf?docid=138782&doclang=EN.

83. Jeong, Sarah. "Zuckerberg Says Facebook Will Extend European Data Protections Worldwide - Kind Of". *The Verge*, April 11, 2018. https://www.theverge.com/2018/4/11/17224492/zuckerberg-facebook-congress-gdpr-data-protection.

84. Keller, Daphne. "A Right to Be Forgotten in Canada?", *CIS The Center for Internet and Society (blog)*, May 1, 2018, accessed June 28, 2018. http://cyberlaw.stanford.edu/blog/2018/05/right-be-forgotten-canada.

85. Kight, Stef W. "The Companies That Dominate Chinese Internet", *Axios*, July 22, 2017, accessed May 31, 2018. https://www.axios.com/the-companies-that-dominate-chinese-internet-1513304333-56daf484-5987-4991-a127-46f87357bf40.html.

86. Korte, Gregory y David Jackson. "Trump puts federal libel law on 2018 agenda, escalating complaints against media". *USA TODAY*, January 10, 2018, accessed June 28, 2018. https://www.usatoday.com/story/news/politics/2018/01/10/trump-puts-federal-libel-law-2018-agenda-escalates-complaints-against-media-putting-federal-libel-la/1020913001/.

87. Lessig, Lawrence. "Copyright and Politics Don't Mix". *The New York Times*, October 20, 2008. https://www.nytimes.com/2008/10/21/opinion/21lessig.html.

88. Levendowski, Amanda. "Our Best Weapon Against Revenge Porn: Copyright Law?", *The Atlantic*, February 4, 2014. https://www.theatlantic.com/technology/archive/2014/02/our-best-weapon-against-revenge-porn-copyright-law/283564/.

89. Lewis, Stephen. "The Splinternet". *Doc Searls Weblog (blog)*, December 16, 2008. http://blogs.harvard.edu/doc/2008/12/16/the-splinternet/.

90. Liptak, Adam. "Hate Speech or Free Speech? What Much of West Bans Is Protected in U.S.?" *The New York Times*, June 11, 2008. https://www.nytimes.com/2008/06/11/world/americas/11iht-hate.4.13645369.html.

91. Loh, Alicia. "Google v. Equustek: United States Federal Court Declares Canadian Court Order Unenforceable". *Jolt Digest*, November 16, 2017, accessed September 3, 2018. https://

jolt.law.harvard.edu/digest/google-v-equustek-united-states-federal-court-declares-canadian-court-order-unenforceable.

92. Manjoo, Farhad. "Right to Be Forgotten Online Could Spread". *The New York Times*, August 5, 2015. http://www.nytimes.com/2015/08/06/technology/personaltech/right-to-be-forgotten-online-is-poised-to-spread.html.

93. Masnick, Mike. "Apparently Not Too Many People in Europe Care About Having Microsoft's Bing 'Forget' Them". *Techdirt*, July 11, 2014. https://www.techdirt.com/articles/20140710/16275627843/apparently-not-too-many-people-europe-care-about-having-microsofts-bing-forget-them.shtml.

94. Masnick, Mike. "DMCA's Notice and Takedown Procedure is a Total Mess, And It's Mainly Because of Bogus Automated Takedowns". *Techdirt,* March 30, 2016, accessed May 31, 2018. https://www.techdirt.com/articles/20160330/01583234053/dmcas-notice-takedown-procedure-is-total-mess-mainly-because-bogus-automated-takedowns.shtml.

95. Masnick, Mike. "Ecuador Continues To Use US Copyright Law To Censor Critics". *Techdirt*, January 28, 2016, accessed June 28, 2018. https://www.techdirt.com/articles/20160126/18061933438/ecuador-continues-to-use-us-copyright-law-to-censor-critics.shtml.

96. Masnick, Mike. "For 10 Years everyone's Been Using 'The Streisand effect' without paying; now I'm going to start issuing takedowns". *Techdirt*, January 8, 2015, accessed June 5, 2018. https://www.techdirt.com/articles/20150107/13292829624/10-years-everyones-been-using-streisand-effect-without-paying-now-im-going-to-start-issuing-takedowns.shtml.

97. Masnick, Mike. "The DMCA should not be an all purpose tool for taking down content; and it's especially bad for harassment". *Techdirt*, May 27, 2016, accessed June 28, 2018. https://www.techdirt.com/articles/20160527/01241334560/dmca-should-not-be-all-purpose-tool-taking-down-content-espeically-bad-harassment.shtml.

98. Maurer, Tim and Robert Morgus. "Stop Calling Decentralization of the Internet 'Balkanization'". *Slate*, February 19, 2014. http://www.slate.com/blogs/future_tense/2014/02/19/stop_calling_decentralization_of_the_internet_balkanization.html.

99. Meinrath, Sascha. "The Future of the Internet: Balkanization and Borders". *Time*, October 11, 2013, accessed May 31, 2018. http://ideas.time.com/2013/10/11/the-future-of-the-internet-balkanization-and-borders/.

100. Moran, Chris. "Things to Remember about Google and the Right to Be Forgotten". *The Guardian*, July 3, 2014. http://www.theguardian.com/technology/2014/jul/03/google-remember-right-to-be-forgotten.

101. Nazer, Daniel. "Copyright, the First Wave of Internet Censorship". *Electronic Frontier Foundation*, January 18, 2018. https://www.eff.org/deeplinks/2018/01/copyright-first-wave-internet-censorship.

102. Pasternack, Alex. "NASA's Mars Rover Crashed into a DMCA Takedown". *Motherboard*, July 1, 2014. http://motherboard.vice.com/blog/nasa-s-mars-rover-crashed-into-a-dmca-takedown.

103. Peguera, Miguel. "No More Right-to-Be-Forgotten for Mr. Costeja, Says Spanish Data Protection Authority". *CIS The Center for Internet and Society (blog)*, October 2, 2015, accessed May 29, 2018. http://cyberlaw.stanford.edu/blog/2015/10/no-more-right-be-forgotten-mr-costeja-says-spanish-data-protection-authority.

104. Peltz-Steele, Richard J. "The 'Right to Be Forgotten' Online Is Really a Right to Be Forgiven". *The Washington Post*, November 21, 2014. http://www.washingtonpost.com/opinions/the-right-to-be-forgotten-online-is-really-a-right-to-be-forgiven/2014/11/21/2801845c-669a-11e4-9fdc-d43b053ecb4d_story.html.

105. Perrott, Eric. "False DMCA Takedown Notices: Ninth Circuit Holds That Copyright Owners Must Consider Fair Use Before Issuing Take-Down Notices". *Gerben Law Firm PLLC (blog)*, accessed May 31, 2018. https://www.gerbenlaw.com/blog/false-dmca-takedown-notices-ninth-circuit-holds-that-copyright-owners-must-consider-fair-use-before-issuing-take-down-notices/.

106. Perry Barlow, John. "A Declaration of the Independence of Cyberspace". *Electronic Frontier Foundation*, January 20, 2016. https://www.eff.org/cyberspace-independence.

107. Powles, Julia. "Google's Data Leak Reveals Flaws in Making It Judge and Jury over Our Rights". *The Guardian*, July 14, 2015. http://www.theguardian.com/technology/2015/jul/14/googles-data-leak-right-to-be-forgotten.

108. Powles, Julia and Enrique Chaparro. "How Google Determined Our Right to Be Forgotten". *The Guardian*, February 18, 2015. http://www.theguardian.com/technology/2015/feb/18/the-right-be-forgotten-google-search.

109. Roberts, Jeff. "No, Copyright Is Not the Answer to Revenge Porn". *GIGAOM*, February 6, 2014. https://gigaom.com/2014/02/06/no-copyright-is-not-the-answer-to-revenge-porn/.

110. Roberts, Jeff. "The GDPR and Our Balkanized Internet: What We Lost". *Fortune*, May 26, 2018, accessed June 28, 2018. http://fortune.com/2018/05/26/gdpr-internet/.

111. Rosoff, Matt. "Here's How Dominant Google is in Europe". *Business Insider*, November 21, 2014, accessed May 28, 2018. http://www.businessinsider.com/heres-how-dominant-google-is-in-europe-2014-11.

112. Silver Smith, Chris. "CEO Who Forged Court Order to Get Google to Remove Defamation Faces Prison". *Search Engine Land*, November 13, 2017. https://searchengineland.com/ceo-forged-court-order-get-google-remove-defamation-faces-prison-282946.

113. Silver Smith, Chris. "Google Thaws (a Little) on Defamation Cases". *Search Engine Land*, March 20, 2017. https://searchengineland.com/google-thaws-little-defamation-cases-271612.

114. Silver Smith, Chris. "Paradigm Shift: Has Google Suspended Defamation Removals?" *Search Engine Land*. December 30, 2016. http://searchengineland.com/paradigm-shift-google-suspends-defamation-removals-266222.

115. Singel, Ryan. "YouTube Flags Democrats' Convention Video on Copyright Grounds". *WIRED*, September 5, 2012. http://www.wired.com/2012/09/youtube-flags-democrats-convention-video-on-copyright-grounds/.

116. Spence, A. Michael. "Preventing the Balkanization of the Internet". *Council on Foreign Relations*, March 28, 2018, accessed June 28, 2018. https://www.cfr.org/blog/preventing-balkanization-internet.

117. Sutton, Maira. "Copyright Law as a Tool for State Censorship of the Internet". *Electronic Frontier Foundation*, December 3, 2014. https://www.eff.org/deeplinks/2014/12/copyright-law-tool-state-internet-censorship.

118. Sutton, Maira. "State Censorship by Copyright? Spanish Firm Abuses DMCA to Silence Critics of Ecuador's Government". *Electronic Frontier Foundation*, May 15, 2014. https://www.eff.org/deeplinks/2014/05/state-censorship-copyright-spanish-firm-abuses-DMCA.

119. Thierer, Adam. "The Conflict Between a 'Right to Be Forgotten' & Speech / Press Freedoms". *Technology Liberation Front*, November 5, 2010. https://techliberation.com/2010/11/05/the-conflict-between-a-right-to-be-forgotten-speech-press-freedoms/.

120. Timberg, Craig y Sarah Halzack. "Right to Be Forgotten vs. Free Speech". *Washington Post*, May 14, 2014. https://www.washingtonpost.com/business/technology/right-to-be-forgotten-vs-free-speech/2014/05/14/53c9154c-db9d-11e3-bda1-9b46b2066796_story.html.

121. Thompson, Derek. "The Fall of the Internet and the Rise of the 'Splinternet'". *The Atlantic*, March 8, 2010. https://www.theatlantic.com/business/archive/2010/03/the-fall-of-the-internet-and-the-rise-of-the-splinternet/37181/.

122. Trujillo, Mario. "Public Wants 'right to Be Forgotten' Online". *The Hill*, March 16, 2015. http://thehill.com/policy/technology/236246-poll-public-wants-right-to-be-forgotten-online.

123. Tummarello, Kate. "We Won't Let You Forget It: Why We Oppose French Attempts to Export the Right to Be Forgotten Worldwide". *Electronic Frontier Foundation*, November 29, 2016. https://www.eff.org/deeplinks/2016/11/we-wont-let-you-forget-it-why-we-oppose-french-attempts-export-right-be-forgotten.

124. Tung, Liam. "Bing and Yahoo Respond to 'right to be Forgotten' Requests". *ZDNet*, December 1, 2014, accessed May 29, 2018. https://www.zdnet.com/article/bing-and-yahoo-respond-to-right-to-be-forgotten-requests/.

125. Turk, Victoria. "The Streisand Effect of Google Forget". *Motherboard*, July 3, 2014. http://motherboard.vice.com/read/the-streisand-effect-of-google-forget.

126. Unesco. "Keystones to Foster Inclusive Knowledge Societies: Access to Information and Knowledge, Freedom of Expression, Privacy and Ethics on a Global Internet" (2015).

127. Vick, Kevin L. "The Right to Be Forgotten". *Media Law Resource Center* (n.d.). http://www.medialaw.org/component/k2/item/3994-the-right-to-be-forgotten.

128. Volokh, Eugene. "Arizona Bar Accuses Libel Lawyers of Suing Fake Defendants - Volokh Conspiracy". *Reason.com*, January 29, 2018. https://reason.com/volokh/2018/01/29/arizona-bar-accuses-lawyers-of-suing-fak.

129. Volokh, Eugene. "California Supreme Court Will Decide: Can Court Order Yelp to Take down Defendant's Post, Though Yelp Wasn't Even a Party to the Lawsuit?" *Washington Post*, September 21, 2016, accessed April 20, 2017. https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/09/21/california-supreme-court-will-decide-can-court-order-yelp-to-take-down-defendants-post-though-yelp-wasnt-even-a-party-to-the-lawsuit/.

130. Volokh, Eugene. "N.Y. Bill Would Require People to Remove 'Inaccurate,' 'Irrelevant,' 'Inadequate' or 'Excessive' Statements about Others". *Washington Post*, March 15, 2017. https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/15/n-y-bill-would-require-people-to-remove-inaccurate-irrelevant-inadequate-or-excessive-statements-about-others/.

131. Volokh, Eugene. "Texas AG's Office Accuses 'reputation Management Company' of Procuring Fraudulent Libel Takedown Lawsuits". *Washington Post*, September 12, 2017. https://

www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/12/texas-ag-accuses-reputation-management-company-of-procuring-fraudulent-libel-takedown-lawsuits/.

132. Wayne Crews Jr., Clyde. "One Internet Is Not Enough". *Cato Institute*, April 11, 2001. https://www.cato.org/publications/techknowledge/one-internet-is-not-enough.

133. Williams, Rhiannon. "Microsoft's Bing Begins Taking 'right to Be Forgotten' Requests". *The Telegraph*, July 17, 2014. http://www.telegraph.co.uk/technology/microsoft/10974029/Microsofts-Bing-begins-taking-right-to-be-forgotten-requests.html.

134. Wohlsen, Marcus. "For Google, the 'Right to Be Forgotten' Is an Unforgettable Fiasco". *WIRED*, March 7, 2014, accessed May 29, 2018. https://www.wired.com/2014/07/google-right-to-be-forgotten-censorship-is-an-unforgettable-fiasco/.

135. Woolery, Elizabeth, Sanna Kulevska, and Maria Serena Ciaburri. "Using the Chilling Effects Database for Research: Trademark Infringement Claims as Censorship". *Lumen Blog (blog)*, July 9, 2013. https://www.lumendatabase.org/blog_entries/646.

136. Wu, Tim. "Free Speech for Computers?" *The New York Times*, June 19, 2012. https://www.nytimes.com/2012/06/20/opinion/free-speech-for-computers.html.

137. "512(f) Stories". *Techdirt*, accessed July 3, 2018. https://www.techdirt.com/blog/?tag=512%28f%29.

138. "Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service". *European Commission - Press release*, June 27, 2017, accessed July 9, 2018. http://europa.eu/rapid/press-release_IP-17-1784_en.htm.

139. "Ares Rights retira de la web aquello que incomoda al Gobierno". *El Comercio*, October 28, 2013, accessed June 28, 2018. http://www.elcomercio.com/blogs/desde-la-tranquera/ares-rights-retira-de-web.html.

140. "Artists Urging Reforms of the DMCA Safe Harbor: 'Our Culture Is At Stake'". *JIPEL Blog (blog)*, March 24, 2017, accessed May 31, 2018. https://blog.jipel.law.nyu.edu/2017/03/artists-urging-reforms-of-the-dmca-safe-harbor-our-culture-is-at-stake/.

141. "Automattic Inc. v. Steine, 82 F.Supp.3d 1011 (2015)". *Leagle*, accessed July 3, 2018. https://www.leagle.com/decision/infdco20150303850.

142. "Berne Convention for the Protection of Literary and Artistic Works". *WIPO World Intellectual Property Organization*, accessed June 28, 2018. https://www.wipo.int/treaties/en/ip/berne/.

143. "Complaints". European Data Protection Supervisor, accessed September 2, 2018. https://edps.europa.eu/data-protection/our-role-supervisor/complaints_en.

144. "DOJ v. Reporters Comm. for Free Press, 489 U.S. 749 (1989)". *Justia Us Supreme Court*, accessed May 29, 2018. https://supreme.justia.com/cases/federal/us/489/749/case.html.

145. "EU Privacy Removal". Accessed May 29, 2018. https://www.google.com/webmasters/tools/legal-removal-request?complaint_type=rtbf&hl=en&rd=1&pli=1.

146. "First Amendment". *Legal Information Institute*, February 5, 2010. https://www.law.cornell.edu/constitution/first_amendment.

147. "Forget.me: discover what is the Right to Be Forgotten". *Reputation VIP (blog)*, accessed May 29, 2018. https://www.reputationvip.com/blog/forget-me.

148. "French Court Refers Google Privacy Case to ECJ". *POLITICO*, July 19, 2017. https://www.politico.eu/article/french-court-refers-google-privacy-case-to-ecj/.

149. "French Court Refers 'right to Be Forgotten' Dispute to Top EU Court". *Reuters*, July 19, 2017. https://www.reuters.com/article/us-google-litigation/french-court-refers-right-to-be-forgotten-dispute-to-top-eu-court-idUSKBN1A41AS.

150. "French Government Secures 'Right to Be Forgotten' on the Internet". *Privacy & Information Security Law Blog (blog)*, October 21, 2010. https://www.huntonprivacyblog.com/2010/10/21/french-government-secures-right-to-be-forgotten-on-the-internet/.

151. "GDPR Is in Effect: Now You Decide on Your Digital Privacy". *News European Parliament*, May 25, 2018. http://www.europarl.europa.eu/news/en/headlines/society/20180522STO04023/gdpr-is-in-effect-now-you-decide-on-your-digital-privacy.

152. "Google Inc v. Equustek Solutions Inc.". *Global Freedom of Expression Columbia University*, accessed May 29, 2018. https://globalfreedomofexpression.columbia.edu/cases/equustek-solutions-inc-v-jack-2/.

153. "Google sets up 'right to be forgotten' form after EU ruling". *BBC News*, May 30, 2014. http://www.bbc.com/news/technology-27631001.

154. "Google v. Equustek". *Electronic Frontier Foundation*, October 24, 2016. https://www.eff.org/cases/google-v-equustek.

155. "Google v. Equustek - ND Cal Order Granting Preliminary Injunction". *Electronic Frontier Foundation*, November 2, 2017. https://www.eff.org/document/google-v-equustek-nd-cal-order-granting-preliminary-injunction.

156. "Google v. CNIL (CJEU)". *Reporters Committee for Freedom of the Press*, November 29, 2017. https://www.rcfp.org/browse-media-law-resources/briefs-comments/google-v-cnil-cjeu; Mark Scott.

157. "Google Updates 'Right to Be Forgotten' Form". *MediaMaze*, accessed May 29, 2018. https://www.mediamaze.nl/google-updates-right-to-be-forgotten-form/.

158. "Intermediary Liability in the United States". *Publixphere*, accessed June 28, 2018. https://publixphere.net/i/noc/page/OI_Case_Study_Intermediary_Liability_in_the_United_States. Private.

159. "Lectures". *CopyrightX (blog)*, October 31, 2013. http://copyx.org/lectures/.

160. "Remedies for Cyber Defamation: Criminal Libel, Anti-Speech Injunctions, Forgeries, Frauds, and More". *Berkman Klein Center*, April 9, 2018, accessed June 28, 2018. https://cyber.harvard.edu/events/2018/luncheon/04/Volokh.

161. "Request Form to Block Search Results in Europe". *Bing*, accessed May 29, 2018. https://www.bing.com/webmaster/tools/eu-privacy-request.

162. "Revenge Porn and Internet Privacy". *C.A. Goldberg*, accessed July 6, 2018. http://www.cagoldberglaw.com/revenge-porn-and-internet-privacy/.

163. "Right to Erasure ('Right to Be Forgotten'), Art. 17". *General Data Protection Regulation (GDPR) (blog),* accessed July 6, 2018. https://gdpr-info.eu/art-17-gdpr/.

164. "Right to Erasure (Right to Be Forgotten) under the GDPR: The Danger of 'Rewriting History' or the Individual's Chance to Leave the Past behind - Ketevan Kukava". *Inforrm's Blog*

(blog), May 31, 2018. https://inforrm.org/2018/05/31/right-to-erasure-right-to-be-forgotten-under-the-gdpr-the-danger-of-rewriting-history-or-the-individuals-chance-to-leave-the-past-behind-ketevan-kukava/.

165. "'Right to be forgotten' Guidelines Published by European Regulators". *TechCrunch (blog)*, November 28, 2014. http://social.techcrunch.com/2014/11/28/rtbf-29wp-guidelines/.
166. "Right to Be Forgotten: Two Years On". *Reputation VIP (blog)*, May 12, 2016. https://forget.me/wp-content/uploads/2018/05/PR_RTBF-2-years-on_Reputation-VIP.pdf.
167. "Search Engine Market Share Europe". *StatCounter Global Stats*, accessed July 9, 2018. http://gs.statcounter.com/search-engine-market-share/all/europe.
168. "Search Removals under European Privacy Law". *Google Transparency Report*, accessed May 29, 2018. https://transparencyreport.google.com/eu-privacy/overview.
169. "Search Removals under European Privacy Law". *Google Transparency Report*, accessed September 2, 2018, https://transparencyreport.google.com/eu-privacy/overview?lu=requests_over_time&requests_over_time=&hl=en.
170. "Survey of Government Internet Filtering Practices Indicates Increasing Internet Censorship". *Berkman Klein Center*, May 18, 2007, accessed May 31, 2018. https://cyber.harvard.edu/newsroom/first_global_filtering_survey_released.
171. "The 25 Largest Internet Companies in The World". *WorldAtlas*, accessed September 3, 2018. https://www.worldatlas.com/articles/the-25-largest-internet-companies-in-the-world.html.
172. "The Overton Window. A model of policy change". *Mackinac Center for Public Policy*, accessed May 29, 2018. http://www.mackinac.org/overtonwindow.
173. "This Is How a Tough New California Law Will Protect Internet Privacy". *USA Today*, June 28, 2018, accessed July 1, 2018. https://www.usatoday.com/story/tech/talkingtech/2018/06/28/how-tough-new-california-law-protect-internet-privacy/744171002/.
174. "Top 15 Most Popular Search Engines | May 2018". *eBIX The eBusiness*, accessed July 5, 2018. http://www.ebizmba.com/articles/search-engines.
175. "Trademark Bullying Stories". *Techdirt*, accessed June 29, 2018. https://www.techdirt.com/blog/?tag=trademark+bullying.
176. "Using Copyright Law to Fight Revenge Porn?" *Centre for Intellectual Property Policy*, December 20, 2016, accessed July 6, 2018. http://www.cippmcgill.ca/news/2016/12/20/using-copyright-law-to-fight-revenge-porn/.

Videos

177. The Berkman Klein Center for Internet & Society. "William Fisher, CopyrightX: Lecture 2.2, Fairness and Personality Theories: Fairness". YouTube video, 32:45, published January 16, 2015. https://www.youtube.com/watch?v=HYJuhPf9s5k&feature=youtu.be.
178. The Berkman Klein Center for Internet & Society. "William Fisher, CopyrightX: Lecture 2.3, Fairness and Personality Theories: Personality". YouTube video, 27:30, published January 16, 2015. https://www.youtube.com/watch?v=hsAcrcveg6k&feature=youtu.be.

179. The Berkman Klein Center for Internet & Society. “William Fisher, CopyrightX: Lecture 4.1, Welfare Theory: The Utilitarian Framework”. YouTube video, 38:11, published February 2, 2015. https://www.youtube.com/watch?v=3ISstJYsCWs&feature=youtu.be.

180. The Berkman Klein Center for Internet & Society. “William Fisher, CopyrightX: Lecture 4.2, Welfare Theory: The Incentive Theory of Copyright”. YouTube video, 30:32, published February 2, 2015. https://www.youtube.com/watch?v=t9wqQNCC-Vs&feature=youtu.be.

181. The Berkman Klein Center for Internet & Society. “William Fisher, CopyrightX: Lecture 7.1, The Rights to Reproduce and Modify: Reproduction”. YouTube video, 28:43, published February 14, 2015. https://www.youtube.com/watch?v=_YmnWVDO19o&feature=youtu.be.