

SEARCH – AND DESTROY

Legislation offering a “right to be forgotten” means that while data lives forever, the ability to find it may not, says PHIL RIGGINS

In May 2014, the Court of Justice of the European Union ruled that the 1995 Data Protection Directive meant EU citizens can petition to have outdated, inaccurate or irrelevant information “removed” from search engine results – a so-called “right to be forgotten.” The information would stay online but would not turn up in a search for a name on Google, Yahoo! or Bing. That’s as close as you can get to sending something to oblivion, a virtual version of Harry Potter’s invisibility cloak.

The ruling has stoked a lively debate among internet leading lights, such as World Wide Web inventor Tim Berners-Lee. While supportive of individual rights, he believes the ruling is “draconian,” erasing important historical information from our collective data banks. While Google and the other big search engines grumbled initially, they have since gotten down to the business of putting in place both the technology needed to comply (easy) and the processes needed to adjudicate each request (not so easy).

So far, Google, which handles about 90 percent of all online searches, has processed approximately 200,000 requests affecting more than 600,000 links, and complied with 60 percent of them. The number of requests is only expected to increase as more people realize they have a chance to redact their own digital history – and as the EU seeks to expand its guidance.

Who benefits from the ruling? People who want to scrub their online trail and ensure their young errant ways don’t derail their career prospects? Convicted felons who have done their time and would like to move on with their lives? What about politicians and celebrities who want to have their online profile shine as brightly as their smile?

The fear is that information in the public interest will be hidden from view, making it more difficult to hold prominent people accountable for their behavior. Each request is being assessed on a

case-by-case basis, balancing the need for privacy and public interest. Only time will tell if Google and the other search engines get it right. Meanwhile, we are already seeing questions raised – including by Google itself for example – about the appropriateness of having a search engine act as the arbiter of what stays and what goes in information searches.

What’s next? The European Parliament has proposed a rule, currently winding its way through the regulatory process, to clarify and extend aspects of the right to be forgotten. Among other things, the amendment would require that companies doing business in the EU comply with the directive, no matter where they are domiciled. Search engines would be required to apply the rule even to searches that originate in non-EU countries.

One concern for companies is that as the EU leads on this issue, so the rest of the world will follow. Will we soon see 50 countries with 50 different rules? Jennifer Granick, Director of Civil Liberties at the Stanford Center for Internet and Society, worries what such a change may

signify. “It marks the beginning of the end of the global internet where everyone has access to the same information,” she says in a recent story in *The New Yorker*, “and the beginning of an internet where there are national networks, where decisions by governments dictate which information people get access to.”

When considering whether to take advantage of the new legislation, it is worth remembering that approved or not, a request itself can sometimes make a bad situation much worse. The case that sparked the EU ruling won the removal of an obscure 36-word article, but resulted in hundreds of headlines highlighting the same information.

Given the publicity surrounding several other requests, *Reuters* says, “The incidents suggest that requesting removal of a link may actually bring the issue back into the public spotlight, rather than obscure it.” As *The Guardian* reports, the individual involved in the original case, “won his fight for a right to be forgotten, or at least to disappear. Unfortunately for him, the fight was pretty damn memorable.”

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DELETE

