

Why Forget What We Can Remember? : The Right to be Forgotten and Its Impact on Libraries and Access to Information

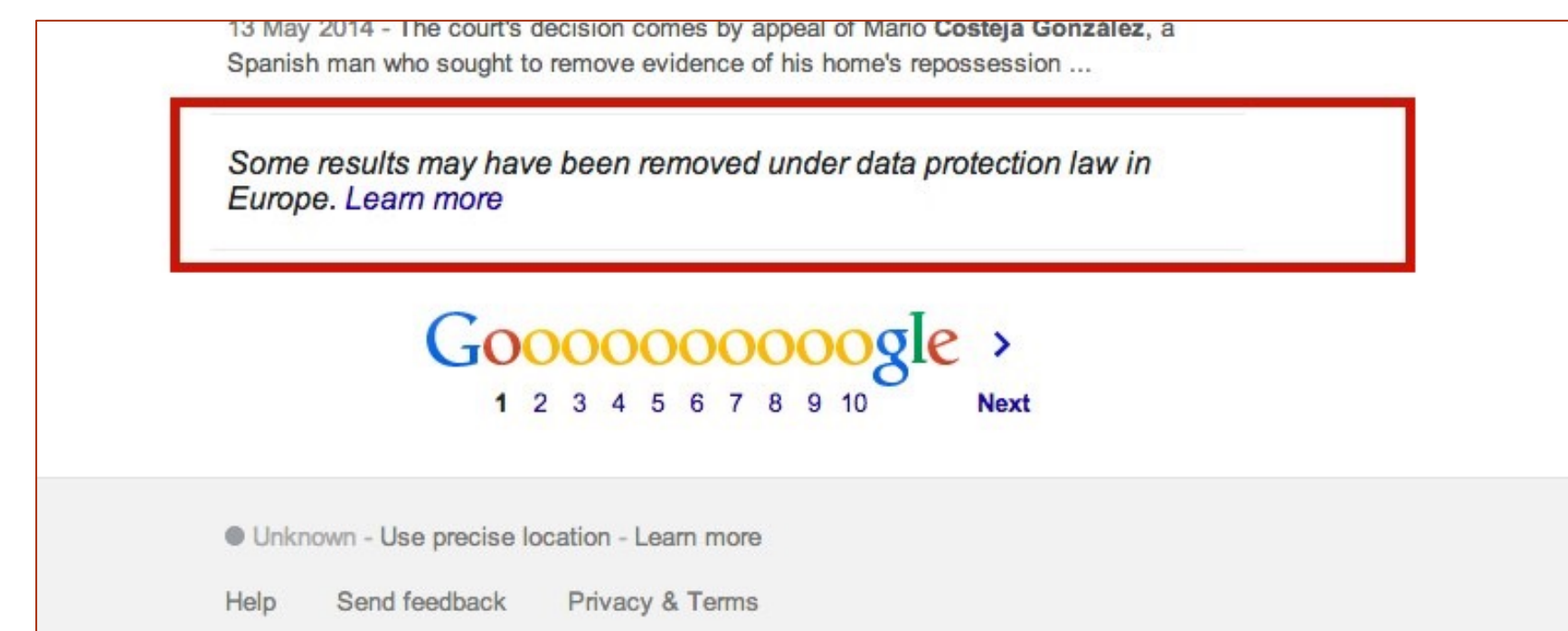
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WHAT IS THE RIGHT TO BE FORGOTTEN?

The right to be forgotten (RTBF) is a right under EU privacy and data protection law which gives citizens the right to request, in certain circumstances, that personal information about them which is held by another party be removed or somehow otherwise “forgotten”.

- applies both online and off, but **most commonly used against search engines** (esp Google), requiring they de-index certain Internet search results (eg, search for “Julie Lavigne” does not retrieve result A, B, or C)



- information does not have to be false, but generally “**inaccurate, inadequate, irrelevant or excessive**” (*Google Spain* 2014)
- while not responsible for actual content they host, EU search engines and web platforms must have procedures in place to de-list links from search results
- **not currently recognized in Canada, but recent developments in case law and policy suggest that it is not far off** (see, eg, Geist 2017)
 - other jurisdictions with a similar right include Argentina, Indonesia, South Korea, Japan, and California

Examples:

- Student-teacher dismissed after a photo of her drinking found online;
- Discovery of decades-old academic article mentioning one-time drug use caused US border agents to permanent bar Canadian researcher from entry;
- After a video of a kid acting out a scene from Star Wars was uploaded by classmates, he endured years of cyber-bullying;
- An article about her husband’s long-ago murder kept surfacing every time a woman’s name was searched; and
- Old but recently digitized news item about the foreclosure of his home was causing difficulties in a lawyer’s current business dealings.

RESEARCH METHODS

- primarily a **literature review** (as part of recent LLM dissertation) of primary and secondary legal sources, focusing on a **comparative analysis of the UK**, as a (now former) EU member country which partially recognizes the right, **and Canada**, which currently does not
- lots of legal scholarship on the topic, but a **gap exists in the LIS literature**, most of which is speculative in nature or focused solely on the practical aspects of the right, such as how to help patrons complete an RTBF request; very few discuss the broader impacts of these removals on access to information (notably, Chamberlain Kritikos 2018; Leta Ambrose/Jones 2012, 2013, 2016; Wyber 2018)

De-listing as a result of right to be forgotten requests risks disrupting traditional information flows and may also be ‘harbingers in continued challenges to content regulation and information access online.’

(Chamberlain Kritikos 2018)

AREAS OF CONCERN

Issue 1: Preservation versus access

- since information not actually taken down, preservation not threatened; however, access to that information is effectively removed (Dulong de Rosnay 2017; Chamberlain Kritikos 2018)
- enough removed links could lead to “memory holes” posing significant risks to the public historical record as well as potentially conflict with librarians’ ethical obligations to provide equitable access to information (de Baets 2016; Edwards 2017)
- de-linking removes access but *only to some*, making access to information dependent on who you are and where you are searching from

Issue 2: Efficiency versus transparency

- original idea was that national data protection authorities would review requests for erasure; however, Google and other large platforms have largely taken over this work
 - between May 2014 and today, Google has received over 1M requests, covering about 4M different URLs, with about 40% of requests approved (*Google Transparency Report* n.d.)
- while system seems efficient, largely managed by private corporations not subject to same rules as government bodies re: accountability and transparency, with only limited mechanisms for review (Lee 2016)

SELECT LIBRARY ASSOCIATION POLICIES

- IFLA *Code of Ethics*: librarians should understand how laws affect information policy, and advocate for both the “substance and administration of laws”
- IFLA *Statement on the Right to be Forgotten*: freedom of access to information “cannot be honoured where information is removed from availability or destroyed”
- ALA *Library Bill of Rights*: libraries should resist “abridgment of free expression and free access to ideas”
- CFLA-FCAB *Statement on Intellectual Freedom and Libraries*: libraries are a “key institution [...] that] provide, defend and promote equitable access to the widest possible variety of expressive content”

WHAT CAN LIBRARIES AND LIBRARIANS DO?

- adapt and comply, advocate and educate
- equitable access to information is **more than just ensuring access to our library collections**; it **also includes advocating for equitable policies**, both by libraries themselves and those groups whose work impacts libraries, such as governments (Wyber 2018)

Look to copyright: while explaining rules to our patrons, we also point out exceptions and flexibility that those rules provide, and advocate for laws and policies which strike a fair balance between users and creators of copyrighted materials. Similarly, we can educate users on privacy rights, as well as adopt policies that help ensure information remains accessible to all.



- what began as fairly straightforward right to delete outdated or incorrect information held by others has morphed into more nebulous ways to “forget”, and can perhaps be more accurately viewed as a right to prevent ‘worldwide access via search engines to online information’ or, at best, a right to obscurity, and have nothing to do with forgetting at all (Mantelero 2014; de Hert and Papakonstantinou 2014)

Examples:

- help patrons submit RTBF requests (where/when available)
- advise how to get more complete results in those cases where it is believed that an RTBF request may be effecting the results; eg, search multiple instances of a search engine, such as Google.ca, .fr, .ru
- demand more transparency and accountability from those making RTBF decisions
- when providing access to local materials, be aware of how certain design and infrastructure choices you make may shape the narrative; eg, by choosing to link a deadname with a preferred name in a transgender author’s name authority file (Sandberg 2019)

FUTURE AREAS OF RESEARCH

- **Continue research on the impact of the RTBF on access to information issues**, including ethical issues such as those encountered in cataloguing and those related to the apparent lack of transparency and accountability in RTBF decision-making
- **Analyse proposals about information life cycles**: Rather than develop general rules which attempt to identify and then obscure certain types of information, legislative reforms should look instead to preservation ethics (Leta Ambrose, “A Digital Dark Age” 2013; see also Mayer-Schönberger 2009)



REFERENCES

Full references and select bibliography available at <https://bit.ly/32xHHsx>.