
Analysis of the Right to be Forgotten around the globe

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Abstract

In this document, we present our research on the various statutes and legislations related to the "Right to be Forgotten" that countries around the world have implemented. Kindly note that this report is complementary to the analysis posted on "The Venice Atlas".

1 Europe

1.1 Spain

Back in 2010, Spanish citizen Mario Costeja Gonzalez lodged a complaint against a Spanish newspaper, Google Spain and Google Inc. Costejas complain was that an auction notice of his repossessed home appeared in Googles search result, even though the proceedings concerning him had been resolved for years, making that information irrelevant. The Spanish Data Protection Agency denied the claim against the newspaper but granted the claim against Google. The judgment stated, among others, that individuals can request that search engines disable links to third party pages which come up against searches using their name, if they "appear to be inadequate, irrelevant or no longer relevant or excessive in the light of the time that had elapsed". This decision essentially confirmed the RTBF, and is credited by experts to be the main case which ignited a lot of debate at a European and International level [1].

1.2 France

France has played a crucial role in the establishment of the RTBF and is actively trying to enforce it at a local and international level. The most prominent and interesting case, involves Frances Commission Nationale de l'Informatique et des Liberts(CNIL), which fined Google \$100,000 for not applying the RTBF on all domains of its search engine, including google.com. Initially Google abided to the RTBF ruling issued in certain european countries and erased all relative results from the respective domains (Google.fr, Google.de), but didnt remove the results at an international level, stating that it would negatively affect the free flow of information. The CNIL responded to Googles claim emphasising that the removal only affected the search results and did not actually delete the information from the internet. Google offered the compromise of removing the relative search results for users visiting any Google domain, including Google.com, if requested from a country having issued a RTBF order, but strongly disagreed with the global removal of results even for users outside of France. The CNIL response to the above changes was that the users privacy shouldnt be bound by geographic origin of the searcher. At the moment Google has requested an appeal [2][3].

1.3 Russia

Russia introduced its own RTBF legislation, which was signed on July 14, 2015, and has been in effect since the beginning of 2016. According to the new federal law, upon request, search engines must delete links to information that is false, obsolete, or violates Russian laws.

There are some important details of the law that should be mentioned:

1. Search engines doing work on behalf of the government or local authorities are exempt from this regulation.
2. Information concerning criminal prosecutions cannot be deleted or edited, regardless of whether the person has served their prison term or not.
3. State employees cannot invoke this law to hide information on their personal income or property.

Prior to the introduction of this law, Yandex, Russias largest search engine, had made attempts to introduce amendments to the bill, which were unsuccessful. Yandex argued that a search engine cannot take on the role of a regulatory body and act as a court or law enforcement agency. [7]

2 Americas

2.1 United States of America

Contrary to Europe, in the USA the right to freedom of speech trumps that of privacy. This was summarized nicely by Jennifer Granick, the director of civil liberties at the Stanford Center for Internet and Society, who said: Europeans think of the right to privacy as a fundamental human right, in the way that we think of freedom of expression or the right to counsel. The approach of the United States is that of protecting sensitive information, such as medical information or educational records, allowing disclosure only under the consent of the individual or as part of a law-enforcement investigation. Interestingly, Granick stated that the Costeja case in Spain, would never have passed in the the USA, based on the First Amendment protecting the freedom of speech, especially since that the information reported was correct. It is worthwhile to mention a few cases in the USA regarding the RTBF and the following decision. In Texas, an attorney successfully got a court to force Google to remove links on a disciplinary judgement by the local bar association, but eventually Google got a reversal in an appellate court. Another important case was of Nikki Catsouras, who sued the California Highway Patrol for the actions of two employees who leaked photographs, on a variety of grounds, including negligence, infliction of emotional distress and invasion of privacy. [4] The case took more than five years, but eventually the defendants settled for the amount of \$2.4 million. Finally, an interesting law passed in 2015 in California, called the Californias Eraser Button law [5] essentially forced sites that are directed to minors to give minors the ability to delete any content they posted. This law, even though a simple concept and rather logical, is plagued with ethical and technical problems as well as multiple loopholes for companies to bypass it.

2.2 Argentina

The most prominent example of the RTBF in Argentina is a case where native singer-songwriter Virginia Da Cunha sued Google and Yahoo for approximately \$42,000 claiming damages for material and moral harm, because her name was appearing in search results relating to websites offering sexual content, pornography, escorts, and other activities related to sex trafficking [8]. Da Cunha claimed this was done without her permission, harmed her career, and was against her personal beliefs and professional activities. The case concluded with no material damages on behalf of Google and Yahoo, but both companies were ordered to pay \$10,000 for moral damages and remove her photographs from results relating to sex, eroticism and pornography. Regarding the removal of search results, Google responded that it was unable to comply with broad injunctions, whereas Yahoo insisted that the only way to enforce the decision was to block all sites referencing the plaintiff and return instead a page citing the judicial order [9].

2.3 Canada

In the case of Canada there is dispute on whether there is a need for a Canadian RTBF [17], given that there already exists an infrastructure for requesting the removal of content of individuals. Specifically, in Canada, the individual has complete control over the use of his/her personal information and image in the internet, and has the right to request the removal of information published without consent or with incorrect or not up to date data. Furthermore, it is important to note that the ability for an individual to request the removal of personal information is very different from the RTBF in Europe, which targets the results of search engines and not the underlying publishing sites. A

relevant case took place in 2011 between Crookes v Newton , during which the Supreme Court of Canada decided that the use of hyperlinks by search engines cannot be held responsible for defamation purposes since they are an integral part of how the internet works and information is shared [18][19].

2.4 Brazil

Recently in Brazil, a Bill of Internet Rights (Marco Civil da Internet) was approved, which focuses extensively on the protection of user privacy, while at the same time tries to keep a balance with the constitutional right to access information and the freedom of expression. While this bill brought forth the RTBF, it also included many controversial articles that caused lots of institutions, individuals and companies to protest [20]. It is also worth mentioning that Brazil has one of the highest demands for link removal worldwide.

2.5 Mexico

Mexico currently does not have a RTBF but offers individuals the ability to file a complaint with a data controller when the information available is perceived to be in violation with the laws and regulations of Mexico. In recent news though, the Mexican Data Protection Authority (IFAI) is contemplating imposing sanctions on Google Mexico for an alleged breach of the nations data protection law, because it did not comply with a request from a Mexican citizen to remove personal data. The above case has been challenged from free-speech advocates, who believe that the enforcement of such a ruling will allow politicians and business people with shady pasts the ability to cleanse their online presence of any negative material [21][22].

3 Asia

3.1 China

Even though China has very strict policies regarding regulation of online data, there is no RTBF in effect. However, there may yet be a case which establishes precedence. Chinese comedian Deliang Xu is suing the Chinese search engine Baidu in an attempt to get a ruling similar to the European RTBF law. The comedian claims that a Baidu Baike (online encyclopaedia similar to Wikipedia) entry about him allegedly contains incorrect, defamatory content. His main argument is that, while Chinese law does not cover the RTBF, Baidu Baike is a revenue-making product and as such cannot use Mr. Xus information to earn profit without his consent. [13]

3.2 India

Currently in India there does not exist a RTBF framework and according to some respectable individuals like Pavan Duggal (cyber law expert), it is a concept that hasnt gotten much traction yet. It should be mentioned that there exist relevant articles in the law, specifically the IT Act and IT Rules, which upon written request force the removal of content from search engines and internet service providers. [14] One prominent case of the RTBF in India was between Medianama.com and an individual who requested for the removal of some content [15] [16]. The individual threatened that if the site did not comply, he would go directly to Google and request the removal using their RTBF form, which in turn would hurt their search ratings. The company declined the request stating that the RTBF is enforced in Europe and is not binding for India. Finally the individual under legal pressure, retracted the request.

3.3 Japan

While Japan does not currently have an active law similar to the RTBF, there were two recent court rulings relevant to the subject. In the first case, a man demanded that Google remove reports dating three years ago which detailed his arrest and conviction for breaking child prostitution and pornography laws. The court ruled in favour of the man, saying that, depending on the nature of the crime, individuals should be able to undergo rehabilitation with a clean online sheet after a certain period of time has elapsed. This was also the first time in the country that the European RTBF was cited in

court. In the second case, a court in Tokyo became the first in Japan to issue a temporary injunction ordering Google to delete search results relating to the arrest of a dentist who had been arrested for illegal dental practices. It should also be noted that Yahoo Japan stated last year that they would remove information from search results that included addresses, phone number, or referred to minor crimes committed in the past, per a users request. [6]

3.4 South Korea

South Koreas state-appointed media monitoring agency announced back in February that it will implement a version of the RTBF. We have studied the rights to be forgotten for more than a year through a group composed of legal, academic and industry experts, an official said. We plan to introduce the guidelines in the first half of the year. There is still deliberation on the conditions under which the RTBF may be invoked. Users can request removal even if the data was legally posted, but approval depends on the nature of the information. For instance, the information should not be about public figures, such as high-profile officials and lawmakers, neither should they be newspaper articles and academic research that are in the public interest [10].

4 Africa

4.1 South Africa

While South Africa doesnt have a version of the RTBF implemented, they recently passed a Protection of Personal Information act, which, according to law experts, could open the door to users requesting the removal of personal information. As it stands now, the right to be forgotten in South African law is only applicable where information, which is being held by the responsible party, is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or has been obtained unlawfully [11].

5 Australia & Oceania

5.1 Australia

Australian privacy law is governed by the Privacy Act 1988 and the Australian Privacy Principles (APP). Back in 2014, the Australian Law Reform Commission (ALRC) made a move in Europes direction, recommending that a right to deletion of personal information be inserted as an amendment to the Privacy Act as another APP. However, unlike the EU proposal, the ALRCs suggested changes are strictly limited to information that has been provided by the requester themselves. It would not give individuals any scope to demand that information posted online or provided by a third party be removed, meaning that posts about an individual but not made by them would not become subject to erasure requests. [12]

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