

Formulating and Implementing a Right to Be Forgotten in the United States:

American Approaches to a Law of International Origin

Science, Technology, and Society

ST118

3 January 2015

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**Purpose**

The purpose of this study is to evaluate the intertwined effects of technological advancements, culture, international affairs, and law on policymaking in the United States. Specifically, it analyzes the necessity of a “right to be forgotten” in the context of social changes brought about by the rise of the Internet, social media, and big data. The analysis answers two main questions:

- (1) Is there a need for a right to be forgotten in the United States?
- (2) Is the right to be forgotten viable in the U.S., given the features of its culture, history, technology, and law?

**Research Methodology**

After collecting literature from libraries, scholarly databases, and traditional search engines, both sides of the American debate regarding the right to be forgotten were researched, analyzed, and summarized in a collection of notes. Notes and evidence from analyses of the EU law, comparative literature of the U.S. and EU, and evidence supporting specific solutions were then added. Based on the notes, the main complications in implementing the right in the U.S. were identified; major solutions to address each obstacle were also identified. The information was then synthesized to develop a solution harmonizes the benefits of the right to be forgotten with adequate mitigation of potential problems.

## **Introduction and Background**

As the twenty-first century progresses, the global society has become increasingly digitized. Over 2.4 billion people are now connected to the Internet—well over a third of the seven billion who populate the earth—and 70% of these users are online on a daily basis (Culture-ist). The Internet phenomenon has established broad global ties, easily spanning previously unreachable gaps in distance. Even absent such compelling statistics, personal experience confirms the Internet’s growth in popularity and importance. The Internet has become a center for communication, entertainment, research, and study, a hub of activity that has slowly transformed from a mere tool to a space for interaction.

Like all such social spaces, particular sections are more popular than others. As Emily Laidlaw, a PhD candidate at the London School of Economics and Political Science explains, “Search engines are some of the most commonly viewed websites on the Internet[.] ... In Germany, a 2004 survey indicated that 75 per cent of users rely on search engines as their principal means of finding web pages” (124). While the advent of search engines has introduced a revolutionary online resource, search engines’ rapid development in conjunction with social media has created potentially damaging personal situations. The rise of the Web has introduced what the University of Namur’s Professor Cécile de Terwangne terms the “eternity effect”—a Web that “preserves bad memories, past errors, writings, photos, and videos [people] would like to deny at a later stage” (110). The collection of online personal data, consisting of both deliberately posted information and traces of browsing history, are “remembered” indefinitely by the Web, creating a dangerous collection of personal information that can produce a “memory...of rancour, vengeance and belittlement” (110).

The Internet currently stores, virtually unregulated, an extensive collection of personal data. Thus, a vast store of information, both harmless and potentially incriminating, exists for each user and continues to expand daily. The volume of newly created data is so great that, were the information created in a single year to be stored in DVD's, the data would form a stack stretching "from the Earth to the moon and back," a total of 800,000 petabytes (Koops 234). With every "like" on Facebook and every search query entered on Google, each user leaves long trails of digital footprints. These discrete pieces of information, when aggregated in vast databases, can paint a surprisingly thorough image of an individual; "[t]he average Dutch citizen is included in 250-500 databases or in up to 1000 databases for more socially active people. ...Google stores all individual search queries... 'literally, Google knows more about [people] than [they] can remember [themselves]'" (Koops 235).

The information Google remembers, however, is often irrelevant or false altogether. In a well-known Spanish lawsuit, the plastic surgeon Russo sued to remove links to a news article that described a malpractice suit of which he was acquitted twenty years ago. In the two decades since the incident, "Russo has ostensibly practiced successfully," but "[m]any of Russo's patients and potential clients... use Internet search databases as their first destination for information and the gruesome reports presumably dissuade all but the rare" (Eltis 85-6).

Society's default of gradually forgetting past events has shifted towards the unforgetting nature of the online world, where data from years past still emerges as constant reminders of events people may regret. The Internet's tendency to remember rather than forget—to preserve links indefinitely rather than allow the information to quietly disappear from public memory—is particularly damaging for individuals whose careers depend on their reputations. For Dr. Russo,

twenty years of successful practice was not enough to efface one incident. And for many others, the incident itself was outside of the subjects' control.

In the example of a Los Angeles restaurant, Tart, a reviewer had posted false information online that served nevertheless to deter customers. "One reviewer ... posted on the review site complaining about the restaurant's turkey meatloaf. Tart's owner complained to the website, mainly because Tart does not serve turkey meatloaf, but the website refused to remove the one-star review." Tart was thus left in the awkward situation of balancing the truthful and reputationally beneficial; since it could not remove the false review, one of its few remaining options was to "hire consultants to flood the net with (sometimes false) information, meant to distract from the negative or unwanted data" (Eltis 87). This information flood is a common solution to online reputation crises; however, it is ultimately counterproductive to the Web's role as a free space for online interaction. Rather than establishing a barrier-free environment for communication, the false data flood creates a morass of lies and confusion intended to cover painful truths (or even more painful lies). More concerning is that reputation consultations are not accessible to all of the population; the general public often cannot afford consultation or reputation improvement services. Consequently, leaving reputation control to private hands only favors the already-privileged elite, further entrenching an online aristocracy in its position of dominance over the Web. Thus disappears the ideal of the Internet as a free forum.

To open the possibility of reputation management to the public, many countries have adopted a solution: the "right to be forgotten." The concept has various equivalent terms, with phrases such as "right to forget," "right to oblivion," and "right to delete" all describing, generally, "the right for natural persons to have information about them deleted after a certain period of time" (De Terwangne 110; Xanthoulis 8). Presumably, waiting the "certain period of

time” allows the data’s relevance to cool, and embarrassing information is erased from memory just as it would have been forgotten naturally in the offline world. Although the exact implementation mechanism differs across definitions, the general concept of the right to be forgotten involves the deletion either of the offensive source data or the links to the data from search engines. As a right extended to all citizens, the right to be forgotten attempts to solve the biases of privatizing the Internet and presents a measure of control over one’s online reputation.

Perhaps the most notable recognition of the right to be forgotten is in the European Union, where the European Court of Justice upheld the right in a May 2014 ruling and required Google to begin enforcing the right in EU member states. As De Terwangne explains, “Article 8.1 states that ‘Everyone has the right to the protection of personal data concerning him or her.’ ... the EU directive 95/467 relating to the protection of ...personal data and on the free movement of such data, offers a very detailed legal regime” (111). In Spain, Google has already created an online form for users to petition the removal of offensive personal links. Drawing upon an existing framework used to remove copyrighted information, Google’s new form “is now available in twenty-five languages. ...To file a claim, individuals are required to give their name...and provide the links to which they object. ...Petitioners are also required to provide ‘an explanation of why the inclusion of that result in search results is irrelevant...’ If it grants a request, Google then sends a notice to the Webmaster” (Toobin). The process is reviewed by a newly hired team of lawyers, who have, as of July 2014, removed over half of the requested links (Schechner; Vincent). The enforcement of the European Union ruling has garnered worldwide attention as the first instance of (apparent) success in implementing the right to be forgotten.

Outside of the European Union, the right has been either codified or otherwise supported through court rulings in Argentina and Switzerland. In Argentina, the data protection law Ley

25.326 “guarantees that data should be accurate, complete, relevant, and not excessive in relation to the purpose for which it is obtained” and “requires databases to eliminate data that is no longer useful for the purposes for which they were collected” (Carter 33). However, other than civil lawsuits filed by Argentinian celebrities, the Argentinian right to be forgotten has not yet been exercised. Similarly, Swiss law categorizes the right to be forgotten as “part of what the Swiss refer to as the ‘rights of the personality’” (Werro 285), but neither the Swiss nor the Argentinian laws have received the European Court ruling’s level of worldwide attention. The European model of the law seems, in general, to be the dominant authority for formulating the right’s legal framework.

The law, while not an entirely untested concept, remains of questionable benefit to the United States. Given the increased dependency on the Internet and the way in which the Web now defines offline lives, the right to be forgotten seems crucial in the process of reclaiming control over one’s identity—a value that appeals to the classic American ideal of self-determination. Moreover, it seems reasonable to infer that, given the inability of the Internet to remove past mistakes, the right to be forgotten is crucial to the concept of a “second chance.” Since free expression may entail mishaps, the “second chance” is inextricably associated with the existing values of liberty. It is even tied to the United States’ foundation: the country was, after all, originally established by European groups who had been marginalized in Europe and who had hoped for a “second chance” in the New World. It would therefore seem illogical to reject a right so closely intertwined with fundamental American values.

On the other hand, there are serious implementation problems with the right to be forgotten. The concept, although theoretically useful, is difficult to practically define. Deleting data is extremely difficult in a world where information is often saved in caches even when they

are deleted from their original computers or web pages. Moreover, since even the subject of deletion is unclear (as the right could refer to the deletion of data or the deletion of search engine results), the right to be forgotten is vaguely defined and difficult to consistently implement.

Consistency is especially of importance when discussing the right to be forgotten in the context of other established civil rights. For example, while supporters of the right to be forgotten concede that there should be exceptions for historical, statistical, or free speech-related purposes, the criteria for each exception are also poorly delineated. According to European law, “search engines must...have regard to the public interest. These are, of course, very vague and subjective tests” (Drummond). With the right’s applicability left unclear, proponents of the right to be forgotten are left to grapple with a policy that may both solve for key issues in the digital world and create problems of its own.

### **Analysis and Conclusions**

While the right to be forgotten from the Internet may be understood in principle as a right to one’s personality, one fully consistent with—and perhaps even necessitated by—the American values of free expression, self-determination, and “second chances,” in practice, the right suffers major setbacks in implementation; its unabashedly subjective language clashes with such societal needs as free speech and free press. The tendency to copy and retain information, inherent to the Internet’s nature, also diminishes the right’s effectiveness. Therefore, although the right to be forgotten should be implemented, it is clearly imperfect in its current form and should be modified to fit the legal, cultural, and practical needs of the United States.

Among the right to be forgotten’s most important functions is granting each individual the right to represent him or herself accurately online. Such an ability is crucial to navigating a social world increasingly defined by digital activity. Various estimates report that “as many as

91% of employers are using social networks at some point during the hiring process” (Reicher 117). Absent the right to be forgotten, a single past error may haunt an individual years after the fact, creating, in effect, two punishments for one mistake.

Indeed, offline life is now inseparable from the online world, and the inability to prevent unwanted information from seeping from one sphere into the other could be a social nightmare. The threat of being “perpetually...misabeled within a web of infinite memory” precipitates the total unraveling of one’s identity, for people are “powerless to assert or develop an image or identity independently of the online content[;] ...this powerlessness flies in the face of the American ideal of reinventing oneself” (Eltis 88). One particularly unfortunate example of this phenomenon is that of the Canadian girl Amanda Todd; a victim of cyberbullying, Todd eventually took her own life at the age of fifteen (Mungin). Todd’s tragedy serves as a stark reminder of the power of online data; online information is not simply a collection of pixels but rather a force that shapes the context in which lives are understood.

Similarly, the stories of Dr. Russo of Spain and Tart of Los Angeles demonstrate that online information often determines professional success. This is especially true for those whose careers depend upon providing services, but it is also relevant for members of the general workforce (or those who aspire to be part of said workforce). A 2009 survey by Microsoft reports that “70% [of companies] had actually rejected candidates based on what they found [online]” (Schiller). Thus, the right to be forgotten is crucial to presenting an accurate, up-to-date image of oneself to one’s friends, potential customers, and potential employers: by removing harmful data, the right precludes the problems caused by storing unwanted data in a publicly accessible space. The right is a simple, natural solution to the complex problem of reputation management: if the existence of certain data will be harmful, it seems that the easiest solution is

to delete the data before (further) harms occur, creating a blanket of protection that restores the ability to interact free from the weight of past mistakes.

Alternative solutions often over- or under-correct the problem of online privacy. Although a detailed analysis of all possible proposals is beyond the scope of this report, one example is Jonathan Zittrain's "reputation bankruptcy," or a complete elimination of all one's online data after a designated time. Such an extreme measure "might deprive society of more information than is necessary to cure the harm and does not account for unforgivable violations" (Ambrose, Friess, and Martre 157). On the opposite extreme, specifically targeting online hate speech may be useful, but similar measures already exist in the status quo and are far too narrow in scope. The right to be forgotten, in contrast, is presented as a balanced approach that both gives individuals autonomy and attempts to account for and even enhance societal interests.

This ability to control one's reputation is crucial to the value of self-determination. Online information is effectively an extension of one's person, and just as one has the right to determine the fate of one's physical body, one can rightly claim the power to control one's digital "body." As Associate Professor of Law Karen Eltis explains, "control over personal information is the power to control a measure of one's identity. This is indispensable to the 'free unfolding of personality.' It is also a right to a 'rightful portrayal of self'" (91). There is, then, a strong moral justification for the right to be forgotten, and it seems particularly convincing in the context of the United States. Since the U.S. has (regardless of its actual policies) historically rooted itself in conceptions of freedom and democracy, the underlying warrants for the right to be forgotten are especially complementary to an American contextualization of morality. As such, the right to be forgotten is an essential addition to the body of rights that have grown from Constitutional protections.

One such Constitutional protection is the right to free expression; the right to be forgotten has distinct parallels with the right to free speech—just as the freedom of speech also grants people the right not to speak, the right to express oneself with a complete online record (a right exercised by those who document their daily lives on social media) is accompanied by the right not to have data about oneself accessible on the Internet. Indeed, the positive right to do an action is just as significant as its related negative right, and the Constitution recognizes both with equal force. One might even think of not expressing oneself as a (certainly ironic) means of self-expression, for “[t]he right of freedom of thought...includes both the right to speak freely and the right to refrain from speaking at all...[.]’ [A] ‘freedom not to speak publicly... serves the same ultimate end as freedom of speech in its affirmative aspect’” (Taruschio 1001). Accordingly, the right to be forgotten is the right not to express oneself online (or, in the alternative view, to express oneself by removing one’s online data) and is justified by the same principle as the right not to voice an opinion. Since there are already protections for the latter, it seems logical that the former, too, ought to be protected.

Conversely, failure to implement the right to be forgotten would chill free speech; when all of one’s online actions hold potential for future harm, individuals will be disincentivized from expressing themselves in the first place. Since “[their] words and deeds may be judged not only by [their] present peers, but also by all [their] future ones[,]... [they] may thus become overly cautious about what [they] say— in other words, the future has a chilling effect on what [they] do in the present” (Mayer-Schönberger 110-11). The right to be forgotten is therefore necessitated by the values and protections already placed on free speech, for the right to free speech presupposes the desire and ability to freely express oneself in the first place.

Moreover, the nature of the unforgetting Internet has caused all of one's present actions to be framed by past mistakes, making the possibility of a "second chance" almost nonexistent. With the rise of digitized records, individuals have lost the ability to distance themselves from the past, even if they have reformed or since attempted to bury mistakes with beneficence; "[b]y computerizing local public records, the Internet casts the shadow of people's past far and fast; like a curse they cannot undo, their records now follow them wherever they go" (Etzioni and Bhat). This unfortunate consequence of the Internet's connectivity and capacity for storing vast quantities of data stands contrary to the traditional American value of giving second chances, a culture that "rejects the notion that there are inherently bad people" (Etzioni and Bhat). Indeed, the dominant mentality in the United States is that, "[a]s individuals, [they] seek insights into [their] failings so [they] can learn to overcome them and achieve a new start. From a sociological perspective, people are thrown off course by their social conditions—because they are poor, for instance, and subject to discrimination," not because of intrinsic evil that perpetually clings to each person (Etzioni and Bhat). Americans seem to fundamentally believe that even the worst criminal can be reformed, that heinous crimes can eventually be forgiven. They are warmed by stories of self-made individuals, who managed to transcend a life on the streets to become world leaders or corporation executives. This idea "grows out of [their] history, in which those who got into trouble in Europe (whether it was their fault or not) moved to the United States to start a new life;" as such, they continue to imagine the United States as a country where everyone will receive a second chance (Etzioni and Bhat).

The right to be forgotten is critical to such second chances, for it allows reformed individuals to restart life without constant online reminders of their former mistakes. In this respect, the right to be forgotten involves "forgetting" not merely in the sense that data is deleted

but also in the traditional understanding of no longer remembering the past. The ability to distance oneself from past actions is fundamental to the forgiveness that makes second chances possible; according to Meg Ambrose, a doctoral candidate at the University of Chicago, “[T]hose [who] have been wronged are ‘less likely to forgive to the extent that they... recall a greater number of prior transgressions, and are more likely to forgive to the extent that they develop more benign attributions regarding the causes of the perpetrator’s actions’” (Ambrose, Friess, and Matre 110).

More specifically, the legal protections offered by the right to be forgotten parallel both the intentions and consequences of expungement policies in other fields. For example, “[j]uveniles that accumulate a criminal record are often granted forgiveness not just to protect the youth population, but also to cultivate and protect society’s future, decrease recidivism, and limit costs of committing individuals for essentially lifetimes.” In law, “Forgiveness...in general offer[s] great comfort. ...[Individuals] exert a sigh of relief knowing that certain violations do not remain on...record forever.... Digital forgiveness is no different” (Ambrose, Friess, and Martre 153). Especially when considering comparable policies in the offline world, the right to be forgotten seems both a natural and necessary counterpart to guarantee the same promise of a second chance online.

However, describing only the right to be forgotten’s benefits with regard to such values would make a controversial empirical claim absent an empirical warrant. When the effects of the right to be forgotten are analyzed in practice, evidence shows that the right creates practical consequences that could, in reality, undermine the ideals it seeks to bolster. For example, the wording of the law itself—deleting data when it is “irrelevant or no longer relevant”—leaves the definition of relevance unclear. While some interpret relevance as the point at which data is no

longer used for its initial purpose, this is “easier said than done... data are also increasingly being collected for yet unknown or rather vague initial purposes, following the logic of data mining that huge data sets can reveal new and unexpected knowledge” (Koops 243-44). One might also find uses for data beyond its original purpose; in such a situation, the data would continue to be relevant but would not be used for its original purpose. Thus, purpose seems to be a poor criterion for the relevance and possible removal of data.

Other standards for measuring relevance, however, are equally flawed. Another possibility is to allow the users themselves to determine relevance or to set “expiration dates” for when certain information should be forgotten. After all, it is impossible to algorithmically determine data’s relevance—the feeling of embarrassment is a human one and not measurable by a machine. However, user-generated predictions remain subjective; not only can opinions change as one ages (one may find a certain piece of information embarrassing at one point in his or her life but later grow to embrace it), but data that has become irrelevant at one stage could regain relevance at a later time. To force users to constantly judge the relevance of data seems a tedious and unreliable demand. An alternative form of expiration dates—requiring a one-time prediction of the data’s expiry—is no better. The dynamic nature of personal identity would still be problematic, since, “while one's sixteen-year-old self might...choose to post certain information[,]. . .her thirty and even sixty-year-old self (with presumably entirely different notions of what is considered appropriate) will have to live with the consequences of that supposedly ‘informed’ decision” (Eltis 88).

Perhaps an even greater difficulty in both user-generated dates and adherence to original purpose is that neither considers the variety of data types currently in existence. Whereas users may be capable of setting expiration dates for their own social media posts, data collected by

third parties, browsing histories saved without the users' knowledge, and other unintentionally created information would be difficult to cover under an expiration date policy. Even when considered independently, the idea of setting expiration dates for data is only workable for certain kinds of data. User-set dates could easily be overridden by other regulations on data, and some types of data might be exempted altogether. As Professor Bert-Jaap Koops of the Tilburg Institute of Law explains, "there will still be limits to what users can do in terms of defining retention periods ex ante...statutory retention periods exist for many types of data, which will override individual user preferences for expiry dates. At least equally significantly, setting expiry dates may work for digital footprints, but not for data shadows" (243). Koops further explains that, even if data are removed at the source—which is the stronger of the right to be forgotten's two forms—the data can still be copied onto other websites (known as mirror websites) or stored in caches, and "it will be a...challenge for users to identify the particular providers that host copies. [Moreover,]...mirror sites may be less traceable[.] ... There is a significant tendency on the Internet to copy material that is considered funny or embarrassing" (238).

Therefore, it is difficult to consistently implement a method that removes unwanted data, and even if one does manage to remove information, the decision about the removed data's relevance remains a highly subjective one. For example, after the EU decision, thousands of users petitioned Google to remove links to personal data. The majority of the requests, however, were for data that was only marginally connected to the requestors. As *Guardian* journalist Julia Powles observes, "What's interesting is how few of these are actually about press articles, and if they are, they are about incidental mentions" (qtd. in Learmonth). In one case, "Google removed an unflattering story...because a commenter thought better of something he'd written" (Learmonth). For the commenter, it seems both selfish and unfair that an entire article be

removed because of the supposed irrelevance of a single comment. What of the relevance of the hundreds of other comments and the article itself? The author of the article, for example, may have wanted his work to remain publicly available on the Internet. The right to be forgotten thus seems to allow unilateral censorship rather than free expression.

More generally, the right to be forgotten will be difficult to reconcile with U.S. law because the very idea of removing data (often, such as in the case of the commenter, data that was deemed harmful by only one of the many individuals it relates to) seems to violate the Bill of Rights' protections. The overall consensus among academic scholars, too, is that the right would be incompatible—or at least only limitedly compatible—with the First Amendment (Ambrose 11). Referencing the lawsuit filed by Spaniard Mario Costeja, who sought to remove links related to his financial difficulties, Jeffrey Toobin of the *New Yorker* explains that “The American regard for freedom of speech, reflected in the First Amendment, guarantees that the Costeja judgment would never pass muster under U.S. law.”

Indeed, the very assumptions that have made the right to be forgotten successful in the European Union do not exist for the United States, whose culture favors freedom over privacy. Especially when evaluated from a European perspective, the right, despite its purports of upholding the Constitution, is far less consistent with the American cultural context than it is with that of Europe. As Franz Werro, Professor of Law at the Fribourg University Law School (in Switzerland), writes:

[T]he right to be forgotten is unprotected in the United States. ... The notion that constitutional rights could be balanced against a competing constitutional entitlement to the respect of one's private life does not seem to be an option under United States constitutional law. Thus, as a European, one cannot help but be struck by the way in

which the...two Western cultures seem [to be] on irreconcilable paths when it comes to the recognition and enforcement of a right to be forgotten. (286)

The differences in these “assumptions and values” can be observed not only in the stark contrasts between American and European data protection laws but also in the wide disparities between the two regions’ health care policies, social welfare programs, education systems, and other laws. Much of these differences are due to the unique historical background of the United States as contrasted from Europe. Americans, since declaring their independence in 1776, have taken great pride in the inalienable rights of humankind. They are thus reluctant to balance seemingly inviolable rights with any competing interest, even if the interest could help to strengthen other rights and values.

Although the right to be forgotten, as currently implemented in Europe, is unviable in the United States, ignoring the movement towards online self-determination is not an option for U.S. policymakers. The Internet has become far too interconnected, and European laws, even without U.S. counterparts, will so influence international relations that a response must be demanded. Already there have been tensions in the U.S.-EU relationship due to the conflict in Internet regulation laws, and continued inaction would only worsen an alliance crucial to the global economy (Bennett 194; Peckham). Moreover, ignoring the EU law will not be a feasible option, since many EU-based companies with U.S. locations will be required to adhere to the law. For these multinational corporations, their “physical presence or assets in the E.U.” means that they cannot simply ignore the right to be forgotten, as the right is legally enforceable against them (Ambrose 27). As such, the interconnectedness of the global economy renders inaction impossible. The European recognition of the right to be forgotten, regardless of its applicability to the U.S., demands a response from American lawmakers.

Given the right's potential to enhance existing rights, the right to be forgotten can be modified to fit the legal context of the United States and avoid the most problematic conflicts with the First Amendment. In order to eliminate the concern of unilateral censorship—which is the main violation of free speech stemming from the right to be forgotten—the right should be exercised via court orders in the United States, which adds an additional check that helps to regulate the data deleted by the right. Additionally, the United States can work to establish international soft law guidelines (that is, non-binding laws that help to guide the binding laws of states) to experiment with the right and eventually develop a unique version of the right to be forgotten specific to each country's cultural context. Soft law is a critical tool to the process of molding and improving legal policies, as “[o]ften, consensus is best developed...through ‘soft law’ guidelines [that]... permit experimentation, feedback, and revision to respond to developments in technology and business practices” (Bennett 193). The guidance of soft law ultimately recognizes that there is no immediate, comprehensive solution to the right's potential problems while affirming the right's importance to society.

The modified approach to the right to be forgotten would enable U.S. citizens to access the benefits of the right to be forgotten while minimizing the right's legal and practical barriers. A system based on court orders would operate by requiring users who wish to remove data to obtain a court order before proceeding with deletion. The process of obtaining court orders compels the requestors to justify their reasons for removal, thereby adding appropriate limits on potential conflicts with free speech.

Courts also play a crucial role in mitigating the problem of defining the term “irrelevant.” One benefit is the development of a standard procedure to evaluate cases that invoke the right to be forgotten. Filtering a legal principle that initially originated abroad through national courts

integrates the law with the unique background of each country. The system “would allow a body of law to develop for each jurisdiction. It would preserve the different prioritization of privacy and other interests among countries and be less disruptive to sites, services, and information that the world has come to rely on” (Ambrose 27). Such an approach, originating from within the system rather than from superimposition, maximizes the right’s effectiveness. Courts facilitate the rapid creation of norms to counteract the uncertainty associated with an untested principle.

Additionally, because the system places the burden of proving irrelevance on the users rather than on an automatic program, the court order-based approach sidesteps issues associated with data expiration dates. Courts also check unilateral censorship, since data is removed only after approval from a court rather than at the behest of a single individual. More broadly, the process of obtaining a court order incentivizes the deliberation required to determine data’s relevance. Contrasting the effects of DMCA courts and unregulated takedowns for the right to be forgotten, Ambrose concludes that direct takedowns “would likely lead to widespread abuse... and the removal of an unacceptable amount of content” (27-8). Courts, then, provide a critical check for the right’s implementation.

Many European states have already begun to approach the right to be forgotten with the country’s unique cultural context in mind. For example, individual EU states have developed their own interpretations of the right and successfully integrated it into national laws. In Italy, the Garante per la Protezione dei Dati Personali “resolved a...case in 2004 by recognizing the existence of a right to be forgotten within Art[icle] 11 of the Italian data protection law” (Ambrose 26). Similarly, in Spain, “[t]he Spanish Agencia Española de Protección de Datos (AEPD) also recognizes the right...and has pioneered a ‘new’ right to be forgotten” (Ambrose 26). The development of international soft law will aid in this process of experimentation within

countries; by creating loose constraints for the right at an international level, individual countries will be allowed more room to creatively adapt the right for their own purposes.

### **Summary of Conclusions**

At the broadest level, the right to be forgotten guarantees the right of individuals to determine the fate of their data online. As society becomes increasingly digitized, the border between the digital and physical worlds has blurred, and the Internet is now the primary source of personal information. It is now nearly impossible to develop an offline identity independent of one's online persona, and, as such, the right to determine one's data online has become the functional equivalent of offline self-determination.

The merits of online self-determination, however, must be interpreted in the context of the country in which the right is implemented. Whereas privacy may be highly valued in one state, it may be viewed as less important in another. Despite these differences, the Internet's nature prevents states from ignoring the right to be forgotten altogether. Therefore, the international community should consider a modified approach to the right to be forgotten based on court orders and soft law.

Modifying the right to be forgotten provides an adequate solution for most criticisms of the right's implementation. By allowing individuals to place requests for their own data, the court order approach avoids creating an objective definition of the term "irrelevant" (which is ostensibly an impossible task) and instead encourages deliberation by requiring that individuals explain their motives for the courts' consideration. The modified approach checks the ability for unilateral censorship and enables judiciaries to integrate the law into existing protections by operating directly through the courts.

Most importantly, however, the modified approach to the right leaves individual countries sufficient room to adapt the law to and harmonize it with their own cultures. If privacy and freedom are valuable only when contextualized by a country's values, the right to be forgotten, which is closely related to both, cannot be considered apart from a country's culture. Rights, by definition, constrain one's interaction with others in the social space, but culture determines the course of social interaction in the first place. Thus, the greatest benefit of the modified approach is the ability to adjust and improve the right to be forgotten according to the values of each state. This ability parallels importantly with the right's very purpose: just as individuals have the right to shape themselves within the greater sphere of society, states have the right to shape their laws within the greater sphere of culture.

But on the individual level, the right to be forgotten is a beacon of hope, offering a chance to reinvent oneself. Because dependency on the Internet has driven the norm of remembrance away from natural forgetting, too often data from twenty years in the past—in many cases, data created through mistakes beyond users' control—will cast shadows on the lives of users decades after their creation. Ignoring the right would merely pass the burden of reputation management onto private companies, where the status quo has created a market favoring the affluent. The recognition of human rights to expression, self-determination, and “second chances” therefore relies on the right to be forgotten for their full effectiveness, and the right to be forgotten serves as the bridge between the online and offline worlds. Despite potential difficulties in implementation, such a right is a necessity in an increasingly digitized society.

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### Important Note Regarding the Annotated Bibliography

The Annotated Bibliography contains summaries and evaluations of all literature reviewed during the research process, and therefore serves as the review of background literature suggested by the MIT INSPIRE competition.

## Annotated Bibliography

### Academic Journal Articles

Ambrose, Meg L. "It's About Time: Privacy, Information Life Cycles, and the Right to Be Forgotten." *Stanford Technology Law Review* 16.2 (2013): 369-421. *Google Scholar*. Web. 2 Oct. 2014. Meg Leta Ambrose, doctoral candidate in the University of Colorado's ATLAS Institute and a fellow at the Harvard Berkman Center for Internet and Society, approaches the right to be forgotten through a holistic analysis of the information life cycle. The article is uniquely structured: Ambrose, rather than immediately analyzing the policy's specifics, begins with thorough background coverage of the natural death of Internet data. Unlike other authors in her field (such as Cécile de Terwangne, who argues that the Internet's memory is "infallible"), Ambrose cites both numerous examples and various academic studies to show that the Internet's memory, like that of human beings, is short-lived—the "Expiration Phase" of the natural data cycle denotes a time where the information loses relevancy and often quietly disappears. Such examples substantially boost Ambrose's credibility and lend validity to her claims. Furthermore, Ambrose argues that, while the current E.U. policy recognizes the self-expiring, cyclical nature of data, it ignores the possible historical or statistical relevance the data may retain. Moreover, certain aspects of the data may remain true despite the elapse of time, while other data may regain relevance due to specific individual choices (such as deciding to run for public office). Because of these many exceptions, Ambrose claims that, while the current E.U. policy for the right to be forgotten acknowledges both the information life cycle and historical and statistical priorities for data, the law "may not protect against unwanted deletion" due to the sheer volume of factors relevant in the data preservation

and deletion process. Furthermore, the law is critically lacking in its recognition of time as the key variable in the information cycle.

Overall, Ambrose provides a clear, organized perspective on the right to be forgotten. Her logical approach to the policy and ample background information allows the reader to comfortably understand her arguments. In addition, Ambrose makes various cultural allusions throughout her article, allowing reasonably well-read readers to easily understand the connections her examples provide. Her clear, readable style facilitates easy comprehension by college and high school students alike. This article is therefore recommended for preliminary background reading on the topic, as even those with little prior knowledge of the policy in question can easily understand it.

Ambrose, Meg L., Nicole Friess, and Jill V. Matre. "Seeking Digital Redemption: The Future of Forgiveness in the Internet Age." *Santa Clara High Technology Law Journal* 29.1 (2012): 99-163. *Google Scholar*. Web. 14 Oct. 2014. Meg Ambrose, doctoral candidate in the University of Colorado's ATLAS Institute, Dr. Nicole Friess of the University of Colorado Law School, and Dr. Jill Matre of the ATLAS Institute approach the issue of forgiveness in the context of a digitized society. The authors begin by exploring the value and mechanisms of forgiveness as well as current norms surrounding the value (such as the President's ability to legally pardon one of a crime). After concluding that forgetting is often crucial to forgiving, the authors evaluate mechanisms to allow forgetting (and thus forgiving) in a digital context, such as removing records or making data less accessible. The paper is, overall, very clearly written and can be understood even by students at a high school level; however, researchers should note that the paper considers the right to be forgotten in only one dimension (namely, its benefits with regard to

forgiveness), and thus must be supplemented with other analyses that offer a more holistic perspective of the right to be forgotten. Moreover, much of the paper is devoted to discussing the benefits of forgiveness apart from the right to be forgotten in particular. Therefore, researchers should be aware that only certain parts of the paper directly address the right to be forgotten.

Bennett, Steven C. "The "Right to Be Forgotten": Reconciling U.S. and E.U. Perspectives." *Berkeley Journal of International Law* 30.1 (2012): 161-95. *Google Scholar*. Web. 13 Oct. 2014. Steven Bennett, a partner at Jones Day in New York who teaches Conflicts of Law at Hofstra Law School, carefully analyzes the different viewpoints that the EU and U.S. take on issues of privacy and concludes that the two perspectives will eventually converge via "soft law" guidelines. The paper is appropriate even for those with a limited understanding of U.S.-EU relations, as it thoroughly explains each viewpoint and presents various proposals for harmonizing the two perspectives. For those unfamiliar with recent developments between the two regions, Bennett summarizes both the recent EU policies regarding online data and the respective U.S. responses. Additionally, the paper is well organized, providing ample framing information before proceeding with detailed solutions. Bennett's paper will be useful for those seeking to formulate or evaluate specific policies for the European Union or United States.

Carter, Edward L. "Argentina's Right to Be Forgotten." *Emory International Law Review* 27 (2013): 23-39. *Google Scholar*. Web. 13 Oct. 2014. Edward Carter, Associate Professor of Communications at Brigham Young University, explains the development of "right to be forgotten" legislation in Argentina. Following the high-profile lawsuits of several celebrities, who sued Google for the removal of photographs they believed were

improperly associated with pornography, Argentina was forced to reevaluate its laws regarding online personal data. Argentina eventually developed a unique set of data protection laws, the implications of which Carter details. Unlike the majority of the literature, which deals with the right to be forgotten in Europe, Carter's paper uniquely discusses the right to be forgotten in a Latin American country. His paper provides an interesting perspective on the intersection of culture and history with the right to be forgotten; thus, while the paper does not directly address the United States, its ideas can be applied to any country seeking to create its own version of a law with an international origin.

De Terwangne, Cécile. "Internet Privacy and the Right to Be Forgotten/Right to Oblivion." *Revista De Internet, Derecho Y Política* 13 (2012): 109-21. *Google Scholar*. Web. 1 Oct. 2014. Professor Cécile de Terwangne of the University of Namur (Belgium), who has earned an MD, a PhD in Law, and an LLM in European and International Law, explains the right to be forgotten (often referred to as the "right to oblivion") and addresses both potential methods of implementation and possible issues with enforcing a right to oblivion. De Terwangne is also highly organized, with headings and subheadings dividing her main points; the structure effectively adds clarity to the overall paper. However, while de Terwangne does provide a thorough, holistic viewpoint, addressing key arguments in favor of the right (such as the purpose principle of data), problems (such as Internet tracers and caches) and the need to protect conflicting interests, she merely concludes that the right is a *possible* answer to data protection issues and "still controversial." She concedes that the "right is not absolute" and leaves readers unsatisfied with the vacuous nature of her conclusion. Thus, while the article is beneficial

for preliminary reading and background research, its ambivalent tendencies make it inappropriate for use as evidence for either side of the argument. However, de Terwangne's article would be useful for a qualified approach to the right to be forgotten.

Eltis, Karen. "Breaking Through the "Tower of Babel": A "Right to Be Forgotten" and How Trans-Systemic Thinking Can Help Re- Conceptualize Privacy Harm in the Age of Analytics." *Fordham Intell. Prop. Media & Ent. L.J.* 22.69 (2011): 69-95. *HeinOnline*. Web. 2 Oct. 2014. Karen Eltis, Associate Professor of Law at the University of Ottawa, offers a thorough argument regarding the nature of creating privacy law in an international context. She warns readers that usage of key terms—even "privacy" itself—requires a keen awareness of the connotations that each culturally distinct society associates with the terms. Thus, Eltis frames her argument by establishing an understanding of privacy within the context of the Internet. This approach is especially helpful because Eltis convincingly shows that other competing definitions of privacy would be inapplicable to a digital context. She provides several convincing examples of Internet misrepresentation (adding humor to a few) and argues that, absent a right to be forgotten, such misleading information will remain public to the unnecessary detriment of their subjects. Finally, Eltis analyses the cultural and historical justifications for the right to be forgotten, contrasting the dignity-based German tradition with the privacy-based American one. Such comparisons are especially helpful for researchers studying the cross-cultural implications of the right to be forgotten; given that the Internet is a tool for globalization, the substance of such arguments is difficult to ignore. Thus, Eltis's article is highly recommended for researchers studying global models of the right to be forgotten

and looking for important framing arguments for both the definition and implications of privacy in our interconnected world.

Koops, Bert-Jaap. "Forgetting Footprints, Shunning Shadows: A Critical Analysis Of The "Right To Be Forgotten" In Big Data Practice." *Scripted* 8.3 (2011): 230-56. *Google Scholar*. Web. 2 Oct. 2014. Bert-Jaap Koops, Professor of Regulation and Technology at the Tilburg Institute of Law, Technology, and Society (TILT) in the Netherlands writes a thorough analysis of the context and the answers to critical implementation questions for the right to be forgotten. Beginning with an extensive introduction, Koops addresses both the ease of information exchange that the Web provides and the massive amount of data the Internet stores (as of 2010, 1.2 zettabytes). Researchers will find this data particularly helpful for both preliminary background research and for understanding the nature of the right in its proper context: it is difficult to envision the problems that implementation may face without considering the expansive nature of the Web and the vast volume of data it contains. Koops explains that the right to be forgotten can be explained along three major lines of reasoning—"a right to have data deleted in due time, a claim on society to have a 'clean slate,' and an individual interest in unrestrained expression in the here and now" (236). These categorizations are extremely useful for organizing the main arguments in favor of the right to be forgotten, as they outline the nature of each proposed conception of the right. Finally, Koops concludes that, because the third incarnation of the right to be forgotten—the "individual interest"—is an interest rather than a right, there are only two major interpretations of the right to be forgotten. Because of difficulty in pinpointing the individual against whom one has a right and other problems with implementation (such as the *ex ante* nature of the right), Koops concludes that both forms of conceiving the

policy have limits, and thus creating a right to be forgotten can be problematic. Overall, Koops's paper provides important background insight with a clean, readable clarity; however, it fails to conclude definitively for either side of the debate. Koops seems to both acknowledge the importance of the right and criticize its practical consequences; thus, Koops's paper will not be a good resource for those seeking for definitive policy answers.

Laidlaw, Emily B. "Private Power, Public Interest: An Examination of Search Engine

Accountability." *International Journal of Law and Information Technology* 17.1 (2008):

113-45. *Google Scholar*. Web. 14 Oct. 2014. Emily Laidlaw, a PhD candidate at the London School of Economics and Political Science, examines the role of the private search engine in shaping public affairs and interests. Laidlaw explains the search engine's increasingly important role, as search engines are now the most-visited websites on the Internet and the most common resources of information. Because search engines now have the power to shape personal identity, Laidlaw argues that we should create a framework that makes results transparent and protect users. Laidlaw's paper is written in a clear, precise language; it can be easily understood by young researchers or even high school students and will be helpful for those wishing to study the role of search engines in a digitized society.

Taruschio, Anna M. "The First Amendment, The Right Not To Speak And The Problem Of

Government Access Statutes." *Fordham Urban Law Journal* 27.3 (1999): 1001-051.

Web. 18 Nov. 2014. Anna Taruschio (author information unavailable) writes a thorough analysis of the negative right (the "right not to speak") that operates in conjunction with the First Amendment's guarantee of free speech. Taruschio argues that the negative and

positive rights hold equal weight; thus, policymakers should consider both rights in their decisions. Taruschio offers a variety of examples in Supreme Court rulings, providing ample evidence for the importance of the right not to speak. While Taruschio's paper is not directly related to the right to be forgotten, many of its arguments can be applied to the principles that justify the right to be forgotten.

## **Book**

Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Princeton, NJ: Princeton UP, 2011. Web. 19 Oct. 2014. In *Delete*, Viktor Mayer-Schönberger, a professor at the Oxford Internet Institute, explains that, in a digitized world with a Web that recalls more about our lives than we do, forgetting—and thereby releasing a sliver of one's past—is a virtue. Providing several interesting examples, such as a 41-year-old woman who recalls every detail of her existence (and has thereby finds herself too often bogged down by the minutiae of life), Mayer-Schönberger echoes the themes outlined by many others in his field (such as Szekely and de Terwangne). Mayer-Schönberger argues that society will be better served if individuals are given the opportunity to forget their pasts and start anew—indeed, he advocates for a system of self-imposed expiration dates for data. (The expiration date solution, however, is addressed in various other articles, such as those of de Terwangne, Eltis, and Koops, and often criticized for its ineffectiveness: for example, it is impossible to require a sixteen-year-old adolescent to decide an expiration date for her Facebook post, as her teenaged judgment may differ significantly from her perspective only a few years later.) Overall, however, Mayer-Schönberger writes in a clear, convincing style, and his eloquent incorporation of anecdotes makes his writing both interesting and informative. Although Mayer-

Schönberger provides little in the way of unique information (his arguments compose a generic defense of the virtues of forgetting), his book is highly recommended as background reading.

Szekely, Ivan. "The Right to Forget, the Right to Be Forgotten: Personal Reflections on the Fate of Personal Data in the Information Society." *European Data Protection: In Good Health?* Ed. Serge Gutwirth, Ronald Leenes, Paul De Hert, and Yves Poullet. N.p.: Springer Science & Business Media, 2012. 347-63. *Google Scholar*. Web. 14 Oct. 2014.

Ivan Szekely of Central European University (Budapest, Hungary) writes a clear analysis of the right to be forgotten, arguing for a right to be forgotten as one closely tied to a general "right to forget." Szekely offers several general (yet still powerful) criticisms of the lack of forgetting in digital society: people who could once maintain separate spheres of influence (behaving differently for their spouses and children than for, say, their coworkers) are now forced to merge their identities into a single incoherent mess and exploited by various media and advertisements. With no assurances about the dissemination their information, people will alter their behavior, allowing "expectations, pressures, and opportunities" to shape them (353). Because the cost of deleting data is so high, personal data will then become a sort of currency, causing people to act as consuming machines rather than individuals. Szekely concludes by demanding a right both to forget and to be forgotten. Szekely's essay (published as a chapter in a book), while powerful, seems lacking in hard evidence. Many of his claims appear irrational—why does the right to forget data about oneself force everyone to behave differently? Why is a lack of forgetting the sole cause of the materialism of society, and not broader influences such as capitalism? Upon closer analysis, while Szekely's writing is both clear

and emotionally charged, the practical applications of the essay are weak. The scenarios that Szekely attempts to depict seem exaggerated and unrealistic, making the essay unique but ultimately unhelpful for those seeking to justify a law or policy.

### **Magazine**

Etzioni, Amitai, and Radhika Bhat. "Second Chances, Social Forgiveness, and the Internet." *The American Scholar*. The American Scholar, Spring 2009. Web. 18 Nov. 2014. Noted sociologist Amitai Etzioni, who is also University Professor at George Washington University, writes a compelling article with co-author Radhika Bhat, a research and outreach assistant at George Washington University. Etzioni and Bhat examine the value of second chances, evaluating both their effectiveness and their viability in a society defined by an unforgetting Internet. They argue that, while many second chances are indeed ineffective (which explains high recidivism rates among released convicts), society should still create measure that make a second chance possible. Etzioni and Bhat give the examples of sealing online records and making databases responsible for keeping information up-to-date. Etzioni and Bhat are clear, effective writers, and they use short anecdotes and examples to effectively illustrate their ideas. Their style would therefore be suitable to those unfamiliar with the subject or for high school students, as the anecdote they open with creates a both an interesting and informative article.

### **Periodical**

Drummond, David. "We Need to Talk about the Right to Be Forgotten." *The Guardian*. Guardian News and Media, 10 July 2014. Web. 27 Nov. 2014. David Drummond, the senior vice president for corporate development and chief legal officer for Google, expresses his disagreement with the 2014 European Court ruling in favor of the right to

be forgotten. Drummond argues that free expression is a human right (quoting the UN's Universal Declaration of Human Rights) and offers a short, passionate defense of leaving information online. He promises to keep the process as transparent as possible and describes the measures that Google has already taken to protect the public interest. Although Drummond's editorial is short, it reveals many of the thoughts and procedures occurring behind the 2014 EU ruling and offers a fascinating perspective on the role of Google as the right's enforcer. Whereas more scholarly sources take an objective, analytical view (arguing, as Laidlaw does, that the search engine has too influential a role in society to refuse the responsibility), Drummond reveals the actual process of implementation.

Learmonth, Michael. "Facebook Posts Drive Most Removal Requests Under Europe's 'Right To Be Forgotten' Law." *International Business Times*. IBT Media, 05 Nov. 2014. Web. 27 Nov. 2014. Michael Learmonth, a writer for the *International Business Times* and previously for companies such as *Reuters* and *Business Insider*, describes some of the post-ruling impacts of implementing the right to be forgotten. In many cases, Learmonth writes, requesters have asked to remove articles in which they were only marginally mentioned (such as in a quote) or because they wanted to remove the comments they had left on an article. Learmonth concludes by stating that most of the removals are for those who had small digital footprints in the first place, as a single link holds more weight for those with small footprints than for those with heavy online presences. Learmonth's article provides an interesting perspective the right to be forgotten's effects, questioning—albeit implicitly—the legitimacy of removing links when the requesters were only tangentially related.

Mungin, Lateef. "Bullied Canadian Teen Leaves behind Chilling YouTube Video." *CNN*. Cable News Network, 12 Oct. 2012. Web. 3 Nov. 2014. Lateef Mungin of CNN describes the trials of a fifteen-year-old Canadian girl who, after years of online bullying, ultimately took her own life. Although Mungin's article is brief, it provides a haunting illustration of online personal data's damaging power.

Peckham, Gardner G. "Bipartisan Cooperation Is Key to US-EU Transatlantic Trade." *The Hill*. News Communications, Inc., 26 July 2013. Web. 27 Nov. 2014. In a brief news article, Gardner G. Peckham explains the economic importance of U.S.-EU relations, writing that the two economies make up almost one-third of total global trade. Peckham argues that the U.S. and EU must establish a transatlantic agreement on privacy issues, as the agreement is crucial to maintaining a vital part of the world economy. Peckham concludes by emphasizing the importance of bipartisan cooperation in creating such an agreement.

Schechner, Sam. "Google Starts Removing Search Results Under Europe's 'Right to Be Forgotten'" *The Wall Street Journal*. Dow Jones & Company, 26 June 2014. Web. 27 Nov. 2014. Sam Schechner of *The Wall Street Journal* writes an informative article, describing the effects of implementing the right to be forgotten following the European Court's ruling. Schechner explains that, as of a month before the article's publication, Google had already received more than 41,000 requests for removal and was anticipating a total of more than 500,000 requests in the first year. Schechner also provides a brief overview of some of the most notable cases of removal requests, such as that of Spaniard Mario Costeja Gonzalez. The article is a useful read for preliminary background research, as it presents a clear description of the right to be forgotten and an outline of its impacts.

Schiller, Kurt. "Getting a Grip on Reputation." *Information Today*. Information Today, Inc., Nov. 2010. Web. 18 Nov. 2014. Kurt Schiller, assistant editor at *Information Today*, describes the rise of online reputation management companies in a short, informative essay. As search engines become increasingly important, several corporations have taken advantage of the desire to maintain an accurate reputation online by making the deleting and altering of information their profession. Schiller's article presents an alternative to the right to be forgotten—controlling personal information using private companies.

Stein, Joel. "Data Mining: How Companies Now Know Everything About You." *TIME* 10 Mar. 2011: n. pag. *WorldCat*. Web. 14 Oct. 2014. Joel Stein is known for writing humorous and satirical works for *TIME* magazine, and in "Data Mining," his humor remains undeniable despite the article's informative nature. Arguing that, as the volume of personal data increases in the digital world, the significance of each piece of data diminishes considerably, Stein concludes that "we're not all that interesting," implying that a right to be forgotten is unnecessary. One of the major advantages of Stein's article is its easy readability; because of its conversational nature, high school students can easily read, comprehend, and retain interest throughout. The article also contains several key examples of data mining schemes and evidence that our sensitivity to data mining has significantly decreased over time. Thus, while Stein's article is recommended for background reading due to its interesting, informative nature, its conversational tone makes it unhelpful for use as evidence in academic papers.

Thompson, Bill, and Andrea Kates. "The Debate." *Engineering and Technology* Sept. 2014: 26. *WorldCat*. Web. 14 Oct. 2014. Bill Thompson, technology pundit for BBC News online, and Andrea Kates, a commentator on Internet privacy and a featured TED speaker, write

brief, juxtaposed essays both for and against the right to be forgotten. Bill argues that the right to be forgotten allows for potential abuse of the Internet, advocating instead for correcting the framework of publication (preventing inflammatory information from being published in the first place). Kates, in turn, argues that the right to be forgotten is closely connected to freedom of expression (an idea frequently echoed by many authors in the field). Because of the essays' brevity, many of the arguments lack full development and are not satisfactorily warranted. In addition, Thompson's position fails to address the use of the right to be forgotten as a means of expression: the right for individuals to erase data they created themselves. Merely regulating data protection will not solve for all of the right to be forgotten's benefits. Overall, however, the juxtaposed essays provide a brief summary of the arguments on both sides of the topic; the article is recommended as a starting point for research, but it has little use beyond providing preliminary information.

Toobin, Jeffrey. "The Solace of Oblivion." *The New Yorker*. Condé Nast, 29 Sept. 2014. Web. 1 Oct. 2014. Jeffrey Toobin, staff writer at *The New Yorker* and senior legal analyst for CNN, provides both an account of Google's response to the recent European Court ruling in favor of the right to be forgotten and a narrative of a California family—the Catsourases—whose daughter, after a fatal accident, was photographed, publicized, and ridiculed throughout the Internet. The Catsouras family's legal battle exemplified the importance of the right that Google—with a newly hired staff of lawyers—is now required to protect. Whereas in Europe, individuals may request removal of personal links, such a right is nonexistent in the United States, forcing the Catsouras family to file a lengthy lawsuit. Toobin's article is both well written and informative; it can be easily

read by high school students yet readily quoted for academic papers, for Toobin's writing style is more formal than those of other journalists. Moreover, Toobin's strategy of using both anecdotal examples and descriptions of Google's current processes is especially helpful. Readers are dually exposed to civilian and legal issues surrounding the right to be forgotten. Such exposure creates a holistic picture of the right by juxtaposing two contrasting perspectives. Readers are brought to think beyond both the individuals' desires and the corporations' interests and consider a broader solution that benefits all parties involved. Finally, the article can be easily understood with little prior knowledge, making it useful as a starting point for research.

Vincent, James. "Google Removes Half of Requested Links under the EU's 'Right to Be Forgotten' Ruling." *The Independent*. Independent Digital News and Media, 25 July 2014. Web. 27 Nov. 2014. James Vincent, Science and Technology Reporter for *The Independent*, writes a short, informative article describing the process and effects of implementing the right to be forgotten. Since the European Court's ruling, Vincent writes, Google had complied with over fifty percent of requests for deletion and had (as of the article's publication) received over 91,000 total requests.

## **Web**

Culture-ist. "More Than 2 Billion People Use the Internet, Here's What They're Up To." *The Culture-ist*. The Culture-ist, 9 May 2013. Web. 26 Nov. 2014. The Culture-ist provides a thought-provoking infographic and numerous statistics on Internet usage, including the number of Internet users worldwide, the number of languages used on the Internet, and the top web browsers. One of the most shocking statistics is that eight new people begin

to use the Internet each second. All of the numbers only serve to illustrate the truths that we already feel.

Williams, Steve. "The LGBT Rights Cause Where Trans Rights and the Right to Be Forgotten Meet." *Care2*. N.p., 31 May 2014. Web. 19 Oct. 2014. Steve Williams, a writer at the social issues website Care2, outlines in a brief article the connection between transgender identity and the right to be forgotten. For many transgendered individuals, the existence of one's gender record has detrimental impacts on both their ability to find employment and their capacity to fully participate in society. For instance, Williams cites the experience of C, a transgendered woman who faced questioning of her identifying during both her job-seeking process and in dealing with government paperwork. Such discriminatory treatment of transgendered individuals amounts to the oppression of gender non-conforming persons and a suppression of their free expression. Williams's article provides unique insight into an issue rarely explored by other writers on the topic; rather than focusing on a generic right to expression, Williams discusses the specific implications of the right to be forgotten for transgendered individuals. Thus, Williams's article is recommended for those considering a narrower approach to defending the right to be forgotten. However, because of the brief, cursory nature of the article, more research will be required in order to fully develop the argument. Williams's article, although unique in perspective, is too short to provide sufficient empirical or anecdotal evidence of the transgender experience; as such, it leaves the reader curious about many related issues, such as how the right to be forgotten solves for transgender oppression and how the benefits of the right relate to the problems with implementation explored by other authors.

## Miscellaneous

Ambrose, Meg. "Speaking of Forgetting: Analysis of Possible Non-EU Responses to the Right to Be Forgotten and Speech Exception." Telecommunications Policy Research Conference. George Mason University School of Law, Arlington, VA. 2013. Web. 14 Oct. 2014. Meg Ambrose, a doctoral candidate in the University of Chicago's ATLAS Institute and a fellow at the Harvard Berkman Center for Internet and Society, summarizes the positions of many common authors on the topic of the right to be forgotten (such as Ambrose, Ausloos, and Castellano), and delineates the possible actions that the United States (and other non-EU countries) can take in response to the recent EU ruling in favor of the right to be forgotten. Ambrose argues that the United States may pursue one of four options: "(1) adopt the E.U. right to be erasure, (2) ignore the right to erasure, (3) comply with right to be forgotten take-down requests, or (4) work to establish a compromised version of the right to be forgotten;" among these four options, Ambrose argues that the first is unviable due to potential conflicts with the First Amendment (1). The second is also unfeasible both because of political consequences and because of inevitable interaction with EU countries. The third, too, is unfeasible because it allows for potential abuse and causes disruptions in website functionality. Thus, the only remaining option is to create a compromised right to be forgotten. However, because the enforcement of the right to be forgotten can still be problematic, Ambrose concludes with a warning rather than a definitive advocacy. Therefore, while the article is extremely informative and clearly organized, it is not useful for defending a particular policy. Ambrose spends the majority of the article establishing background and analyzing each course of action in detail; however, she makes few suggestions in favor of an alternative. Because Ambrose argues

by elimination, moreover, the article is not useful as evidence for more concise argumentation, as much of the development takes place throughout several sections in the paper. Finally, due to the vast quantity of allusions throughout the article, this paper is not recommended for preliminary reading, since prior knowledge of the authors mentioned by Ambrose would facilitate a more thorough understanding of Ambrose's main points. More generally, Ambrose provides a logical and well-justified perspective that will prove extremely useful for researchers interested in potential courses of action (rather than a specific policy) or those seeking to write a qualified argument for the right to be forgotten.

Conley, Chris. "The Right to Delete." Association for the Advancement of Artificial Intelligence, n.d. Web. 14 Oct. 2014. Chris Conley, the Technology and Civil Liberties Fellow of the ACLU of Northern California, defends the right to delete one's outdated information and outlines specific mechanisms for implementation. Conley's essay concisely establishes several key issues: Conley argues that the right to delete is necessary and suggests that executing the policy involve automated deletion systems, legal requirements, and social norms. Conley's paper is especially helpful because, unlike many other papers on the topic (which tend to defend qualified positions or remain inconclusive), it establishes a clear advocacy and outlines ways to achieve its end. By examining legal precedents and proposing specific methods to enact the policy, Conley's article will be especially helpful for those seeing to understand the right to be forgotten as a possible future law. Moreover, Conley writes in a fairly readable manner, and his paper is explicitly organized by subheadings to provide additional clarity. However, those who cite Conley's paper when advocating a right to delete should also use additional justifications;

although Conley makes strong claims in favor of the right, his article lacks empirical evidence, relying instead on briefly elaborated assertions. His policy recommendations can therefore seem hypothetical, as he provides no examples of precedents or evidence of success. While Conley makes valuable recommendations, he often states his recommendation without explaining the reasons for his proposals in detail. Thus, coupling Conley's suggestions with statistics would lend the arguments far greater strength.

Werro, Franz. "The Right to Inform v. the Right to Be Forgotten: A Transatlantic Clash." Center for Transnational Legal Studies Colloquium. Georgetown University, Washington, D.C. May 2009. Web. 14 Oct. 2014. Franz Werro, Professor of Law at the Fribourg University Law School in Switzerland and at Georgetown University in Washington, D.C., analyses the legal context behind the right to be forgotten and examines several legal cases related to privacy and First Amendment rights. Werro concludes that "there is no reason to think that a right to be forgotten stands any chance of developing under the current... American privacy law" (298). Additionally, Werro compares the social and historical backgrounds of Europe and the United States, citing differences in values as a critical reason why the right to be forgotten is not feasible in the United States. Werro's clear, concise conclusion is a helpful summary of a fairly technical legal analysis. Students reading the paper must be aware that Werro assumes a legal background from his audience and thus does not shy away from detailed legal discussions. However, Werro accommodates for the technicality of his paper by including several sections entitled "A Short Comment," in which he explains and synthesizes main ideas. It is recommended that high school students, especially those not well read in law, read Werro's comments closely in order to

understand the crux of his argument. Overall, Werro's paper provides an extremely helpful analysis; abundant in case examples and comparisons, Werro establishes a clear legal case against the right to be forgotten in the United States.

Xanthoulis, Napoleon. "Conceptualising a Right to Oblivion in the Digital World: A Human Rights-Based Approach." N.p., 22 May 2012. Web. 18 Nov. 2014. Napoleon Xanthoulis of the legal firm Dr. K. Chrysostomides & Co. LLC seeks to define the "right to oblivion" (a term often used interchangeably with the right to be forgotten) and argues that, while there is no single conception, the right, as generally conceived, is a necessity in the digital world. Xanthoulis concludes by arguing that the right is merely an extension of existing principles, an added protection for human well-being. While Xanthoulis provides an excellent discussion of the terms' definitions (comparing usages of the "right to oblivion" with the apparently interchangeable words "right to be forgotten," "right to forget," and others) and attempts to define the right's scope in detail, Xanthoulis's paper is greatly flawed. The writing style, filled with italics that interfere with clarity, is ultimately distracting. Additionally, Xanthoulis borrows heavily from Bert-Jaap Koops's paper on the same subject; while his sources are appropriately cited, the frequent use of quoted material makes Xanthoulis's paper a possible resource for summarizing background material but not for original ideas.