



# The implications of digital collection takedown requests on archival appraisal

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## Abstract

As data privacy legislation and protections are implemented and advocated for internationally, archivists must consider how these developments impact their work, particularly appraisal. Online digital collections make records more easily accessible to researchers and the general public. However, private and sensitive information may be disseminated through these collections inadvertently. In 2018, the European Union (EU) passed the General Data Protection Regulation, which includes right to be forgotten (RTBF) legislation. This enables EU citizens to request the redaction of their personal information online. In the wake of EU court rulings which demonstrate how the RTBF impacts what archives make accessible, and increasing public concerns regarding online privacy, archivists should be aware of the possibility of receiving increased digital collection takedown requests and what their legal liabilities may be. This article explores how takedown requests, as well as RTBF advocacy and criticism, are positioned with respect to appraisal theory. It also addresses how takedown requests affect appraisal praxis and how archivists can be better prepared to manage them.

**Keywords** Takedown requests · Right to be forgotten · Digital collections · Appraisal · Privacy · GDPR

## Introduction

Minimal processing and mass-scale digitization enable archivists to make materials accessible online quickly and efficiently. The impetus to create digital collections is grounded in the profession's values regarding access and corresponds with the open access and Creative Commons movements in academia and wider society. These vastly disseminated materials democratize research by giving internet users the ability to use archival materials. They also raise awareness of the role of archives. However, online

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materials can be detrimental to individuals if they contain private or culturally sensitive materials. Items in physical collections have a smaller viewership and, thus, are less likely to threaten a person's reputation. In digital collections, private information may be included unintentionally. Archives have had to respond to requests for redaction in the past, but amid online digital collections making records more easily accessible across distance and time, and new data privacy law, there is an urgency to consider what this entails for archives and appraisal.

In May 2018, the General Data Protection Regulation (GDPR) was implemented in the European Union (EU). GDPR offers data protection and privacy to EU citizens and applies to their information globally. This includes the right to be forgotten (RTBF), also known as the right to erasure, a concept where a person has autonomy over their online information and should not be penalized based on it. As a result of this legislation, EU citizens can request that websites containing their personal information are delisted from search engines, and courts have also ruled that the original sources had to remove information.

Data privacy legislation has received increased interest globally, and the risk of personal data breaches is now in the public consciousness. Despite these developments, freedom of expression takes precedence in USA courts, so it is uncertain whether federal data privacy legislation could pass there or if it may be limited to particular states. Professional codes of ethics oblige archivists to protect privacy, but sensitive information may be released in digital collections unknowingly. Archives and libraries have received digital collection takedown requests because of the presence of private and incriminating information, culturally sensitive materials, and copyright violation. Archivists should be conscientious of their responsibilities to individuals whose privacy may be compromised. They also need to be cognizant of the GDPR's applicability to information outside the EU.

Amid the creation of the GDPR, archivists, librarians, and historians strongly opposed the RTBF legislation, critiquing its impact on the integrity and authenticity of the historical record in the long term. In the meantime, archivists should not only consider the possibility of receiving increasing takedown requests and what their legal liabilities may be but also what the implications are for archival appraisal. This paper draws on archives literature regarding the redaction of private information from both physical and digital collections, as well as perspectives on the RTBF and libraries from historians and legal scholars. It explores how digital collection takedown requests, in addition to their advocates and critics, are positioned with respect to appraisal theory. This is followed by a discussion on how takedown requests affect appraisal praxis and how archivists can be better equipped to mitigate them. Then, the conclusion offers suggestions for future studies, such as how EU archivists are managing RTBF requests and how innovative technologies like deepfake videos may call for a greater need for data privacy regulation.

## Literature review

While the previous literature on takedown requests and archives has yet to investigate appraisal, it has addressed cases of RTBF requests in the EU, criticism of that legislation, and non-legal-based requests in USA institutions. It has also tended to focus on balancing privacy with access from a legal perspective.

Although the GDPR went into effect in 2018, a 2014 EU ruling held that an individual's right to privacy outweighs the public's need for information, depending on whether they are a public figure, and that search engines must remove links to sites containing information about third parties, even if lawful, when the data subjects find it to be irrelevant or inadequate (Vavra 2018). As of 2017, Google had received 671,463 requests from EU citizens to remove links, and 43.2% of these were accommodated (Edwards 2017). There have also been legal decisions which involved not just the search engine, but the source information directly. In 2015, a Hamburg, Germany court ruled that a newspaper archive had to prevent search engine indexation of a story about a crime without a conviction, and in 2016, a Belgian court ruled that a digital newspaper archive had to delete information about someone convicted of causing a traffic accident (Vavra 2018). These cases are indicative of how data privacy legislation can impact archives.

While Article 17(3) of the GDPR states that there are circumstances where the RTBF does not apply, the directive may have different interpretations in future courts. The exemptions include exercising the right to freedom of expression and information, complying with a legal obligation, public health reasons, establishing or defending legal claims, and "archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing" (Intersoft Consulting 2018). Wyber (2018) noted it is unclear what "render impossible" and "seriously impair" mean in practice, so this language could eventually be challenged. While professional codes of ethics call for archivists to protect privacy (International Council on Archives 1996; Society of American Archivists 2011), the cases above illustrate how information not deemed private may still be subject to removal.

Librarians and archivists are accustomed to balancing access with privacy, but many claim that the RTBF conflicts with values of the profession. While Noble (2018) attested that RTBF legislation is essential for historically underrepresented groups to protect themselves, the profession has been a strong opponent of RTBF legislation. Upon seeing the draft legislation, the National Archives of the UK (European Commission 2011) and L'Association des archivistes français expressed the criticism (2013). In 2016, the International Federation of Library Associations and Institutions (IFLA) (2016) issued a statement on the RTBF, arguing that it makes genealogical and historical research more difficult. The American Library Association (ALA) Office for Intellectual Freedom also conveyed their concerns about providing and finding information, especially as it relates to public figures (Lynch 2016). Historians have also claimed that the legislation puts the historical record in jeopardy (De Baets 2016).

Others have critiqued disparities in the takedown request model. Vavra (2018) discussed how removal decisions are problematic because they are left to corporations, such as Google, which are not very transparent. The search engine serves different results depending on the country, which results in inequality of access. Additionally, those on the advantaged side of the digital divide are more likely to make a takedown request. De Baets (2016) recognized that politicians and other public figures would be more likely to make these requests and that many have posthumous privacy and reputation management plans for roughly 70 years after their passing. Thus, individuals with privilege or power can more easily reap the benefits of the RTBF.

In the USA, libraries and archives have indeed received requests from those in positions of power. In 2007 and 2008, Cornell alumnus Kevin Vanginderen filed two libel lawsuits against the university library after finding a digitized news article that reported his 1983 burglary charge (Dressler and Marchionini 2018). This was dismissed eventually but illustrates a scenario other archives may encounter. In April 2019, Hollins University in Roanoke, Virginia redacted digitized yearbook photos depicting blackface, a request from the university president, and librarians likened this to censorship and criticized the top-down decision (Kafka 2019). The Society of American Archivists (2019) released a statement denouncing the removal.

Libraries and archives have received takedown requests for a variety of reasons. In eleven surveys and five interviews with academic librarians, Schofield and Urban (2016) revealed that most institutions commonly received removal requests unrelated to the Digital Millennium Copyright Act (DMCA) or copyright because of private, sensitive, or embarrassing information. Dressler and Kristof (2018) surveyed 23 Association of Research Libraries (ARL) institutions and discovered that takedown requests were also received because of the presence of culturally sensitive information.

In addition to affecting the digital custodianship of records, Beckles (2013) acknowledged that the RTBF also impacts appraisal, selection, and preservation. She explained that archivists preserve the content, structure, and context of records and that their “ability to select that information based on the acquired skill of archival appraisal will be impaired if that information, for whatever reason, has already been removed” (Beckles 2013, para. 3). However, there is a lack of explicit research on how this affects the appraisal process and collections that have already been put online.

## Discussion

Despite data privacy legislation being a polarizing topic, archivists are receiving and will continue to receive takedown requests. Appraisal theory should direct the decision to accommodate a request. Subsequently, when appraising new materials that may be digitized for online access, there are steps they can take in anticipation of receiving removal requests.

## Appraisal theory and the RTBF

The following two sections explore how predominant twentieth century appraisal principles articulated by Hilary Jenkinson and Theodore R. Schellenberg, and emerging models, can assist archivists in responding to takedown requests.

*Creator-driven approaches* The USA prioritizes freedom of speech and expression over the right to privacy and erasure, so RTBF legislation may not gain traction because once information is made public, it has less protection than in the EU (Pike 2016). Nonetheless, privacy advocates and lawmakers call for stronger data privacy laws in the wake of online breaches like the Facebook–Cambridge Analytica data scandal (Isaak and Hanna 2018). Noble (2018) also argued that individuals need to have control over their data because the information that was never meant to be open is being digitized and widely distributed. An example of an open collection that violates privacy is the 1980s–1990s lesbian porn magazine *On Our Backs*, which was made freely available without consent from those who appeared in it (Robertson 2018).

While many librarians and archivists have been apprehensive about the RTBF, Noble supported RTBF legislation in the USA “where greater encroachments on personal information privacy thrive and where vulnerable communities and individuals are less likely to find recourse when troublesome or damaging information exists and is indexed by a search engine” (Noble 2018, p. 122). She also posited that forgetfulness is not just an individual but a social good. Henttonen (2017) observed that in a world where big data and digital footprints threaten privacy, and archivists are no longer the gatekeepers to information, the RTBF lets people choose whether they become a part of collective memory. Takedown requests and the RTBF give agency to creators in that they can influence what belongs in an archive.

A corollary in appraisal theory is the creator-driven approach of determining what belongs in an archive, which derives from Hilary Jenkinson in the 1930s. He believed that the integrity and authenticity of archives depended on their custodial history and the circumstances in which they were created, and if archivists attempted to determine what had value, the impartiality of the records would be ruined (Tschan 2002). Consequently, creators were the only ones who could judge which records were destroyed. Until the mid-twentieth century, archivists were not involved in assigning value to records and making appraisal decisions (Cook 2011).

As Jenkinson held, not all archivists may make ethical judgments about what should be in an archive. For many print materials, creators may have never envisioned their widespread access through online digital collections. Had they foreseen this future, they may have chosen not to be involved in the creation of the original materials. During digitization projects, archivists may or may not make reasonable efforts to contact the creators and co-creators of materials, such as the models in *On Our Backs*. Similarly, in 2013 the British Library digitized *Spare Rib*, a feminist magazine from the 1970s–1980s, and added it online under a Creative Commons Attribution-NonCommercial License (Moravec 2017). Twenty percent of the collection were orphan works, materials whose creators could not be located, but these were redacted a year later because of pressure from creative industry trade bodies. Archivists make concerted efforts to protect privacy.

Nevertheless, Moravec (2017) advised researchers that not all digital collections have been created ethically. As a remedy, RTBF legislation allows creators and co-creators to decide whether digital surrogates containing their personal information have a place in the historical record.

Cook (2011) challenged Jenkinson's hands-off approach, indicating that creators could destroy information if they were overprotective of their privacy, wanting to avoid scandal or embarrassment, or hiding the past to influence the future. As a result, the accountability of public figures is undermined. It is plausible that takedown requests could be made by individuals in positions of power, rather than those who are marginalized and put at greater risk by having their personal information being publicly online. Those with greater resources and the capacity to litigate may ask for the removal of information. This can include incriminating or embarrassing information, which archivists may not regard as private, in digitized newspapers and school yearbooks.

Archivists who are committed to respecting and preserving disenfranchised and underrepresented voices may ground their practice in participatory appraisal, which was proposed by Shilton and Srinivasan (2007). In contrast to Jenkinson-influenced appraisal, which distances archivists from creators, the former involves collaboration with communities. The authors explained: "By approaching appraisal in collaboration with community members, archivists are given the chance to assess the value of community records as the community understands them" (Shilton and Srinivasan 2007, p. 93). Takedown requests fit into this model, as they can open a dialog between archivists and individuals who are the subject of collections. In Schofield and Urban's academic library study, "respondents reported that many non-DMCA requests do not lead to removal of the material," and that "by providing a way for concerns to be aired, the informal process can allow discussion and agreement that addresses concerns and prevents further dispute" (Schofield and Urban 2016, p. 143). Archives which already have takedown request forms for their digital collections or are amenable to discussions regarding redaction are engaging with creator-centered reappraisal.

*Future researcher-driven approaches* Many librarians and archivists have expressed caution regarding the RTBF, as it shapes the historical record. The foundation of these concerns originates in the appraisal theory of Theodore R. Schellenberg. Unlike Jenkinson, Schellenberg believed that selection was necessary when acquiring records, especially as their volume in the government increased (Tschan 2002). He also believed that records not only had primary value, which represented their usefulness for their creator, but secondary values, which related to their importance for researchers. While Jenkinson did not distinguish between records and archives, Schellenberg believed that archives comprised records that were assessed as important for future reference and research. Since Schellenberg's writings, archivists have disagreed about his research-driven values. Cook (2011) explained that historians were no longer the only users of archives, which were also being used by other disciplines and in the interest of human rights, and that predicting all these future uses to determine which records have value is infeasible. He also noted that archivists were also beginning to shift

from appraising records based on perceived historical trends to capturing narratives representing a more diverse human experience.

Nevertheless, Schellenberg's legacy endures in the discourse regarding the RTBF. Szekely (2014) discussed how personal data eventually become historical data, and a balance must be met between serving future researchers and protecting the privacy of the living. Henttonen said the RTBF, or privacy self-management, separates archivists from their mission "to preserve information that has been found worthy of preservation by making impartial reasoned judgments about its value for future generations" (Henttonen 2017, p. 286). Dressler and Kristof (2018) raised the question of whether future researchers will be aware of the variety of takedown procedures at academic libraries.

As archives transition from being not only custodians of physical records, but also custodians and stewards of both digital surrogates and born-digital records, they may be guided by an amalgamation of appraisal theories. Practitioners should be conscious of how theory supports decision-making to establish an appropriate direction for appraisal standards in a world of data protection law and takedown requests.

## Appraisal praxis

As a part of their institutions or consortia, archivists can be better prepared for takedown requests by acknowledging their implications from the outset of managing records—during appraisal. Taking proactive steps aligns with the Privacy by Design framework that was developed by Dr. Ann Cavoukian in the 1990s and is included in Article 25 of the GDPR. Privacy by Design embeds user privacy principles into the creation of IT systems and business practices (Cavoukian 2011). It also calls for preventative measures, transparency, and default settings which protect user privacy. Divergent opinions on the RTBF and institutional needs may give rise to different appraisal practices. Nonetheless, archivists can also implement user-centric approaches to appraisal when writing policies and agreements, as well as planning collections access.

Having sound policies is the first step to help ensure there is consistency in decisions to redact or keep information. This sets expectations and can help archivists avoid unfavorable public scrutiny. Schofield and Urban (2016) found that several academic libraries follow "Well-intentioned practice for putting digitized collections of unpublished materials online" published by the Online Computer Library Center (OCLC) (2010). This included adopting and posting a liberal takedown policy, which may take the form of a statement or disclaimer acknowledging copyright and privacy and welcoming contact from rights holders. Dressler and Kristof (2018) also recommended that institutions consider creating a takedown policy and that if they prefer to handle requests on a case-by-case basis, they should know of potential issues. For those who accommodate takedown requests, one option is to move them to a "dark" archive with an expiration date and to be transparent about this process to researchers (Dressler and Kristof 2018). Regardless of the policy or practice, transparency is key. After the national backlash over removing its digitized yearbooks, Hollins University restored access and posted a "Notice on content," which advised

viewers of offensive content and explained that they “maintain the full contents of each issue of the yearbook for historical accuracy” (Hollins Digital Commons n.d.).

OCLC (2010) suggested that archivists work with donors in advance, which entails addressing privacy and intellectual property concerns. Similarly, Gilliland and Wiener (2014) advised archivists to consider not only their responsibility to the donor, but also their institution’s policies on restricting access or making things available and on what level. Donor agreements or deeds of gift should include digitization clauses. Even though some donors may expect their materials to be digitized, it is still important to review the potential concerns of online access with them. Archivists can also educate donors about the potential for breaching third-party privacy. If both parties decide to proceed with digitization, the kinds of access should be discussed. This can be mediated by using the appropriate technology. For example, Moravec (2017) suggested that archivists use participant-controlled digital platforms like Mukurtu, which was built with different types of permissions for indigenous communities. Also, Robertson (2018) put forth DocNow, an organization that designs free, open-source tools for ethical social media archiving.

Even if archivists are dependent on repository software with limited functionality, they should weigh the benefits and consequences of different modes of access. This includes optical character recognition (OCR) for text in documents and whether that is indexed in search engines or only the digital collection software. While OCR benefits scholars doing text analysis and preserves the physical items by limiting their use, broad dissemination may unintentionally release sensitive information. Dressler and Marchionini (2018) reported that at a session on the RTBF at the 2017 Digital Library Federation (DLF) Forum, a scenario was presented where a child finds a violent crime story involving their parent in a digitized student newspaper. Ultimately, the institution removed the text of the parent’s name from the OCR but left the scanned image. Archivists could also scrutinize the kinds of personal information contained in item-level metadata.

In a discussion on stewarding privacy concerns in digital collections, Gilliland and Wiener (2014) proposed that archivists should pay more attention to sensitive material during appraisal by performing an initial privacy audit. In addition to the different access restrictions discussed above, this helps archivists determine how much information may require redaction, what kind of access restrictions to impose, and the collection’s suitability for internet digitization. The authors also suggested that archivists conduct mixed, item-level processing to gauge the presence of personal information in the collection. While these measures provide a safeguard for protecting privacy, limited staff resources may make them infeasible (Gilliland and Wiener 2014).

Alternatively, a sample of records could be digitized, which is appropriate for records used for generalization (Farley and Willey 2015). Researchers could visit, or request and pay for scans of other records in the collection, if required. If those contained confidential information, they could be redacted. This is akin to the approach adopted for the Stanley Milgram Papers at Yale University. Kaplan (1996) discussed how Milgram’s collection contains research data on human subjects and materials have time restrictions. However, she mentioned that researchers can request and absorb the cost of sanitizing materials which are closed.



Lastly, archivists may also consider adding user agreements or nondisclosure forms for researchers. For instance, the controversial Image Archive on the American Eugenics Movement held by the Dolan DNA Learning Center features an agreement that asks researchers to be ethical in how they use the collection (Farley and Willey 2015). On the other hand, it is difficult to enforce and assess whether users abide by them. It is best for archivists to proactively build privacy principles into the appraisal. While it may not guarantee protection from legal liability, it demonstrates that the organization is making a good faith effort to uphold ethical values.

## Conclusions and future study

This paper has investigated the effects data privacy laws and digital collection takedown requests have on archives—particularly appraisal practices—and it has underlined the importance of adopting theory as a foundation for removal decisions. The suggestions presented are not prescriptive, nor are they exhaustive. Collections and organizations are unique, and the archival profession is in flux. As archivists engage in post-custodial projects, decisions relating to takedown requests could involve multiple parties and require deliberation when making privacy restrictions. Federal regulation of personal information and innovative formats of disinformation will also necessitate archivists to rethink their appraisal processes.

The proliferation of fake news and false information about a person can threaten their privacy and harm their reputation. Doctored media today includes deepfakes, realistic videos which are produced with widely available face-swapping software. This technology is problematic regarding provenance and authenticity, and it can be exploited to target journalists and human rights figures (Ng 2018). As archives appraise social media, websites, and other born-digital content, takedown requests may be the only redress available to vulnerable individuals who appear in nonconsensual deepfakes.

In the meantime, a study could be undertaken on whether archives and libraries in the EU have adapted their appraisal workflows and policies since the GDPR was implemented. It could be expanded to other non-EU countries where courts have ruled that citizens are entitled to the RTBF. Future research could also explore collaborations between archivists, IT professionals, information brokers, and privacy advocates. A framework could be developed to assist archivists in advocating for how data privacy legislation affects their work. It could address digital literacy and encourage archivists to teach privacy self-management during instructional sessions at universities or workshops in the community. Empowering individuals with the skills to safeguard their online information could abate takedown requests targeted at archives. The framework could also include best practices for digitizing collections with potentially sensitive content, as outlined earlier.

The coming decades are likely to see further discourse regarding the RTBF. Staying abreast of national and international developments in law and technology will give archivists the capability to exercise foresight in improving their policies and appraisal practices. They can also emerge as leaders in the conversations around the balance between protecting privacy and preserving the historical record.

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