THE RIGHT TO BE FORGOTTEN

By Mike Wagner and Yun Li-Reilly*

"My own business always bores me to death; I prefer other people's."

—Oscar Wilde[1]

Who hasn't "Googled" themselves? For Mario Costeja González, a Spanish lawyer, his search returned links to a 13-year-old newspaper article about a real estate auction for the recovery of social security debts he owed. His reaction to that led, ultimately, to the recent and groundbreaking decision of the Court of Justice of the European Union,[2] which enshrined in EU law the "right to be forgotten".[3]

In 2009, some 800,000 petabytes of digital information were created. This is roughly a stack of DVDs (remember those?) from Earth to the moon and back. In 2010, it was predicted that the digital information created in that year would be 1.2 zettabytes, or 1,000,000,000,000,000,000,000 bytes.[4] The Internet fosters the retention and availability of information and, some of the time, knowledge. But it does so indiscriminately. Should information be forever available, or should some information, at some point, be "forgotten"?[5]

What implications does the development of the right to be forgotten have for Canada and the *Charter*-protected rights of its citizenry? What implications does it have for Internet service providers and the media? When should it apply, and to whom? Finally, and more philosophically, might "forgetting" actually be a good thing? If much of human experience is misery, and painful, must we relive it in an endless hall of mirrors?

"Funes the Memorious" is an Argentine short story about a boy named Ireneo Funes, who fell from a horse and thereafter remembered everything and forgot nothing. For Ireneo, the present was worthless, eclipsed by his perfect and detailed memories of the past.[6]

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One author suggests that forgetting as an ongoing process is essential and necessary for thought, language and personal development.[7]

Enough philosophy. What happened this spring over in Europe, and what is this worldwide fuss all about? [*Thanks for bringing us back … we'd almost forgotten! – Ed.*]

DEVELOPMENT OF THE RIGHT IN EUROPE

Previous Adoption in the Criminal Context

The right to be forgotten is not a novel concept in Europe. *González* was a progression from earlier law. In Switzerland, courts had repeatedly extended the right to be forgotten to those sentenced for criminal offences, as a part of what the Swiss call "rights of the personality"[8] under the Swiss *Civil Code*. Over time, an offender's interest in being forgotten and society's interest in rehabilitation take precedence.[9]

Court of Justice of the European Union: *Google Inc. v. González*

By way of background, in 2011, Mr. González lodged a complaint with the Spanish Data Protection Agency against La Vanguardia Ediciones, the publisher of a daily newspaper with a large circulation in Spain, because a Google search of his name resulted in links to two pages of La Vanguardia's newspaper, dated January and March 1998. Those 13-year-old pages referred to a real estate auction to recover social security debts owed by Mr. González. He sought an order that the newspaper publisher remove or alter the pages in question and an order requiring Google Spain or Google Inc. to remove or conceal personal data relating to him so that it no longer appeared in search results.

Mr. González argued that the passage of years and the fact that the proceedings in question were resolved rendered the references to them entirely irrelevant. The Spanish Data Protection Agency rejected the complaint against the newspaper, but upheld the complaint against Google. Google was told to withdraw the data from its index and deny access to the data in the future. Google applied to have that decision annulled. The Spanish court then referred a series of questions to the Court of Justice of the European Union.

That court held that Google "processed" personal data and enables any Internet user, when searching on the basis of an individual's name, to obtain a structured review of the information relating to that individual on the Internet. Furthermore, this information concerned aspects of Mr. González's private life that could not have been interconnected, or could only have been found with great difficulty, without the search engine. The

court noted that the interference with a person's privacy is heightened by search engines, which render the information "ubiquitous". The potentially very serious interferences with an individual's rights were not justified by "merely the economic interest" of the search engine operator.

Most importantly, the court held that even the processing of accurate data which is lawful at the time may, in the course of time, *become* incompatible with the law.[10] This will be so where the data are "inadequate, irrelevant or excessive in relation to the purposes of the processing … not kept up to date, or … kept for longer than is necessary" in the light of the purposes for which they were collected or processed.[11] The court held that privacy rights, enshrined in the *European Charter*, should as a rule override not only the economic interest of the operator of the search engine but also at times the interest of the general public.

The writers suggest that this is as it should be. The occasional, and occasionally surprising, trumping of corporate and/or collective interests by the rights of individuals is a hallmark of our civilization.

COULD IT HAPPEN HERE?

There is no case on this side of the Atlantic saying that the right to be forgotten can be used as a sword, to remove publicly available information from the Internet. However, the captivating, even poetic, idea of a right to be forgotten has surfaced occasionally in both U.S. and Canadian law.

In 1971, *Reader's Digest* published an article regarding a Mr. Briscoe, detailing his criminal conviction 11 years earlier.[12] The Supreme Court of California held that to identify a person by name in reports of historical bad acts served little purpose: where "a man has reverted to that lawful and unexciting life" led by others, there is no longer the need to "satisfy the curiosity of the public".[13]

However, in 2004, the Supreme Court of California overturned *Briscoe* in *Gates v. Discovery Communications Inc.*,[14] finding it incompatible with its own subsequent decisions that addressed the tension between the right to privacy and the right to free speech and a free press. The early promise of *Briscoe* was killed off, and a resurrection seems highly unlikely.[15]

In Canada, the right to be forgotten may well take root as part of our common law, and it may happen in much the same way that the Ontario Court of Appeal found, in 2012, that there exists a common law right of action for "intrusion upon seclusion".[16]

Canadian law and legal reasoning often hew more closely to European than to American modes of thinking.[17] In particular, our approach to freedom of expression here is tempered in a way one does not see in the United States.

The right to be forgotten as a concept existed in fact, in Canadian legal thinking, long before the European court's ruling. The B.C. privacy commissioner has referred to the right to be forgotten more than once in support of decisions. In one inquiry,[18] the Victoria Police Department had severed and withheld some records under the *Freedom of Information and Protection of Privacy Act*[19] ["*FOIPPA*"] when an individual who had been convicted of the murder of a woman in Victoria in 1978 requested the police information in 1995.[20] The privacy commissioner determined:

> In my opinion, the passage of time has restored the witnesses' personal privacy in respect of their statements. While some of the statements may have been considered in open court in 1978 and 1979, the door of privacy has closed on these records because they contain sensitive personal and law enforcement information. The witnesses' "right to be forgotten" shifts these formerly-available records under the protection of sections 22(1) and 22(3)(b) of the Act. If they were to be disclosed today, there is a presumption that an unreasonable invasion of the witnesses' personal privacy would occur.

The commissioner employed similar reasoning in the civil context. In one inquiry,[21] he determined that s. 31 of the *FOIPPA* enshrined the right to be forgotten, where personal information should be kept only as long as needed for a legitimate purpose, and then destroyed or archived:

> Although increasing public awareness of privacy issues—the main reason for producing this report—is in a developing stage, the field of privacy as a subject for research and writing has existed for at least several decades. In that time, privacy principles have been identified and refined and now form the basis for data protection legislation in all advanced industrial societies. These principles, known as fair information practices, have been explicitly incorporated into Part 3 of the *Freedom of Information and Protection of Privacy Act*. The essential principles follow below, with examples of related *Freedom of Information and Protection of Privacy Act* sections provided in brackets:
>
> …
>
> > Individuals have the right to be forgotten: personal information should be kept only as long as needed for a legitimate purpose of the data collector and then destroyed or archived (section 31).[22]

These occasional references to a right to be forgotten have attracted little commentary. Many remain skeptical that the adoption of the right to be forgotten could be imminent in Canada.[23] They argue that it is a poor fit with the privacy/free speech analytical framework developed in Canadian jurisprudence.[24]

On May 31, 2014, the B.C. Supreme Court issued a decision granting certification of *Douez v. Facebook Inc.*, a privacy-based class action.[25] The reasons include the following:

> [283] As discussed already in dealing with the issue of jurisdiction, the origins of concerns about legal protection of privacy supports the conclusion that two different torts were intended to be addressed by the Act: violation of privacy, for which subjective elements of reasonableness and context were relevant under s. 1(2) and (3); and misappropriation of personality, under. s. 3(2), for which reasonableness and context is not a factor.
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> ...
>
> [286] It appears therefore that the misappropriation of personality tort under the *Privacy Act* envisions the wrongdoer using someone else's name or portrait for advertising or promotion, without it being necessary to show that the person had a reasonable expectation of privacy in their name or likeness.
>
> ...
>
> [360] Given the almost infinite life and scope of Internet images and corresponding scale of harm caused by privacy breaches, B.C. residents have a significant interest in maintaining some means of policing privacy violations by multi-national internet or social media service providers.
>
> [361] Working together the [*Class Proceeding Act*] and the *Privacy Act* provide practically the only tools for BC residents to obtain some access to justice on these issues.

In a further, and also very recent, B.C. Supreme Court decision, *Equustek Solutions Inc. v. Jack*,[26] the court found that it had jurisdiction to issue an interim injunction restraining a non-party, Google Inc., a "global Internet service provider", from including the defendants' websites in search results generated by Google's search engines. The court did not squarely address the right to be forgotten, but referenced *González* and issued the injunction sought against Google. The B.C. court echoed the court in *González* in determining that Google's advertising and search functions are inextricably linked, and concluded that it had territorial competence over Google Inc.

Google had argued that if such an unprecedented (in B.C.) order were granted, then any court anywhere could take jurisdiction over Google's search services because it advertises all over the world. The B.C. court held that this was simply a reflection of Google's global reach. The court noted European decisions that had granted injunctions against Google in similar circumstances.

This decision is under appeal. Among other things, Google argues that similar orders in other jurisdictions may result in global content on the Internet being significantly curtailed.

PRACTICAL ISSUES

González raises a number of practical questions that the European Court has not answered. The threshold at which the right to be forgotten appears to

apply is where the data is *inadequate, irrelevant, excessive, not kept up to date, or kept for longer than is necessary* in relation to the purpose for which it was processed, and in light of the time that had elapsed. But are search engines such as Google suited to assessing what is "inadequate, irrelevant or excessive", when even courts struggle with the balancing of free expression and privacy?[27]

Should it (can it) be left up to Internet service providers to determine whether a piece of information should be forgotten? Google now facilitates complaints or requests from residents in Europe, including an online form whereby residents can submit an application to remove certain links.[28] Here is how Google describes, via Google's website, its roles:

> A recent ruling by the Court of Justice of the European Union (C-131/12, 13 May 2014) found that certain people can ask search engines to remove specific results for queries that include their name, where the interests in those results appearing are outweighed by the person's privacy rights.
>
> When you make such a request, we will balance the privacy rights of the individual with the public's interest to know and the right to distribute information. When evaluating your request, we will look at whether the results include outdated information about you, as well as whether there's a public interest in the information—for example, we may decline to remove certain information about financial scams, professional malpractice, criminal convictions, or public conduct of government officials.[29]

With search engines having been thrust into this role, are they going to have to be the arbiters of the next fight, the one that will inevitably come when, against the right to be forgotten, rise those who assert that the impugned information "deserves to be remembered"?

As of October 8, 2014, Google had received more than 135,000 requests for removal.[30] This has reportedly required an expansion of Google's already large "complaints" department and "an army of paralegals".[31] Google has the money to do this, but will smaller organizations be able to?

The Googles of the world are adept at creating systems and algorithms to manage and sort data, but what these systems cannot do, at least not yet, is engage in the sort of value judgments required to decide whether a complainant's entire set of circumstances should trigger the right to be forgotten.

A New Role for Internet Businesses and Media

Some commentators liken the right to be forgotten to marching into a library and forcing it to pulp books.[32] Others have questioned whether businesses such as Google and Yahoo are now playing the role of "censors-in-chief".[33] In a blog post, Google's chief privacy counsel said that the right to be forgotten has far-reaching implications in terms of what is required of an Internet provider or social media facilitator.[34]

If a college student chooses to publish or post an unflattering childhood photograph of herself on Facebook or Twitter, she is generally able to go back and delete that "post" or "tweet" later, though she has no ability to delete subsequent re-posts or re-tweets of her photo. However, now in the EU, she could demand that Facebook or Twitter remove old re-posts or re-tweets within their websites. Similarly, it appears that she could demand that Google "de-index" any links to this photo when a person searches her name.[35]

Unequal Forgetting: Who Can Enforce the Right?

It is clear from *González* that the right to be forgotten does not apply to every individual equally. The public may have no interest in seeing information about say, the corner grocer, but the situation might be different if one had chosen public life—as politicians, actors and reality TV stars do. A Google search of "George Clooney Childhood Pictures" results in a number of arguably unflattering photographs. Look for yourself, while you still can. No doubt the past political comments of U.S. presidential candidates should be transparent and open to scrutiny. But what about poems they wrote in high school? Where would Google draw the line?

Once individuals become public figures, do they ever have the choice to retreat into anonymity, and do they enjoy the right to be forgotten? Is any and all information about them forever "relevant"?

What about when a public figure becomes a *historical* figure? Take Alexandre Dumas, the author of *The Three Musketeers* and *The Count of Monte Cristo*, for example. In 1867, Mr. Dumas posed for a series of what were considered racy pictures with a much younger American actress who was rumoured to be his mistress. Mr. Dumas went to the French courts to get the photos back from the photographer when they were published. The French courts ruled that Mr. Dumas's right to privacy superseded the photographer's property rights and ordered that the photographs be sold back to Mr. Dumas. A century later, Mr. Dumas is no doubt a historical figure. But how "relevant" is his alleged affair to his classic works of literature? Can his descendants select what is remembered versus forgotten about him?[36]

What if the information about a private individual has a public element? Mr. González's situation involved his house being auctioned to satisfy a debt to the government. Would Mr. González's battle against Google have been easier if he had owed a debt to a neighbour or a friend? What if a private person gets into a tragic accident overseas and the overseas reporters claim that the public wants details of the accident?[37]

The ruling in *González* suggests that for certain types of information, the public interest diminishes and then disappears over time. As mentioned,

Swiss courts have also held that, after a certain period of time, the public had no interest in having access to public records relating to a criminal matter.

THE RIGHT TO BE FORGOTTEN AND FREEDOM OF EXPRESSION

Clearly one person's right to be forgotten can conflict with others' *Charter* rights of freedom of expression. Some have termed the right to be forgotten as the "biggest threat to free speech on the Internet in the coming decade".[38] The initial froth surrounding this development in the law has begun to recede. We might now be permitted to ask: Can a right to be forgotten actually advance freedom of expression?

Some have argued that people should be able to speak and write freely, without the shadow of what they expressed at one point in their lives being used in the future against them.[39] The right to be forgotten implies the sense of liberty of expressing oneself freely in the "here and now", without fear that everything one ever says or writes will live on forever in someone's digital archive, just waiting to be found and then revived by strangers with an unhealthy interest in knowing and publishing things that one thought were done and over. If Funes the Memorious could have forgotten all the past details occupying his mind, perhaps he would have created new thoughts and enjoyed new experiences.

CONCLUSION

Oscar Wilde said, "It is a very sad thing that nowadays there is so little useless information." Friedrich Nietzsche contended: "Without forgetting it is quite impossible to live at all."

We feel that each of them was on to something. And it would be wrong to suggest—as some modern commentators have done—that privacy is a modern invention, a hang-up that has outlived its usefulness. The concept of privacy and the simple right to be left alone date back millennia: privacy has doctrinal roots dating back at least to the Old Testament.[40] The Internet age has come upon us in the relative blink of an eye. Those who decry the right to be forgotten invoke Orwell's *Nineteen Eighty-Four* and equate creation of the right to be forgotten with Big Brother's use, in that book, of "memory holes", down which true (but inconvenient) documents would be dispatched.

Privacy proponents also invoke Orwell, but differently: they say that Internet giants are the enablers of Big Brother and are used to doing the government's bidding.

These issues are worthy of reflection and further reasoned debate.

Mr. González's name will forever be tied to the right to be forgotten, a concept which he helped enshrine in law. A Google search for his name now

yields over 40,000 results.[41] As a lawyer, he no doubt knew and accepted the irony of his situation when he threw down the gauntlet. Mr. González has provoked a long overdue discussion, one which is bound to continue as we seek to resolve the debates which still lie ahead.

ENDNOTES

1. *Lady Windermere's Fan* (1892).
2. *Google Spain SL, Google Inc v Agencia Española de Protección de Datos (AEPD), Mario Gosteja González*, [2014] EUECJ C-131/12 (13 May 2014), online: Court of Justice of the European Union (Grand Chamber) <http://curia.europa.eu/juris/liste.jsf?num=C-131/12> [*González*].
3. This article is a sequel to an article by Mike Wagner, "Privacy, and Reputation, in the Internet Age" (2013) 71 Advocate 347 [Wagner].
4. Bert-Jaap Koops, "Forgetting Footprints, Shunning Shadows: A Critical Analysis of the 'Right to Be Forgotten' in Big Data Practice" (2011) 8:3 SCRIPTed 229 at 234 [Koops].
5. What should freedom of expression really mean? What was the freedom of expression, guaranteed by s. 2 of the *Charter*, intended to protect and cultivate? How should we reconcile that interest with the privacy rights under s. 7 of the *Charter*, the B.C. *Privacy Act* and the common law? As you might have guessed by now, this article will ask more questions than it is able to answer.
6. Jorge Luis Borges, "Funes El Memorioso" (1986) 50 Biblioteca Ayacucho, online: literatura us <http://www.literatura.us/borges/funes.html>.
7. Aleksandar Hemon, "Aleksandar Hemon on Jorge Luis Borges's 'Funes the Memorious'", *The Daily Beast* (26 September 2012) online: <http://www.thedailybeast.com>.
8. "*Die Persönlichkeitsrechte*".
9. In *Société Suisse, X v Société Suisse de Radio et de Television*, BGE 109 II 355 (1983), the Swiss Federal Tribunal was asked to decide whether the son of a criminal sentenced to death in 1939 had the right to prevent the broadcast of a documentary in 1980 about his father's life and execution. The documentary relied entirely on public official records. The court, which based its reasoning on right to be forgotten, held the right of the press to broadcast the names of persons facing criminal charges, was limited to the time of the judicial proceedings. It held that criminals do not remain of interest to the public indefinitely, and leaving them open to public view in perpetuity compromises the rehabilitation process. The public's right to know the identity of an offender, over time, yields to the offender's interest in being forgotten. This is not one anomalous case: the reasoning has been reaffirmed by the Swiss Federal Tribunal in subsequent cases. See, for example, *RAG v W*, BGE 122 III 449 (1996), involving a CEO convicted of white-collar crimes whose right to privacy precluded the publication of his name in relation to the past conviction, given the time that had passed and the goal of rehabilitation. Similarly, in *X v Journal de Geneve et de la Gazette de Lausanne*, 23 10 2003, 5C 156/2003 (2003), a convicted armed bank robber who later was released and found gainful employment succeeded in arguing that he would suffer both economic and mental harm as a result of the publication of his name and past criminal activities in connection with the story of a new criminal trial against his former accomplice. The court held that even if informing the public of criminals' pasts was newsworthy, mentioning the name of *this* criminal was not and tended to interfere with the state's ability to rehabilitate persons.
10. See Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and article 8 of the *Charter of Fundamental Rights of the European Union*.
11. *González*, *supra* note 2 at para 93.
12. *Briscoe v Reader's Digest*, 93 Cal 3d 529 (1971). Consider the parallels with the Swiss decision, 30 years later, in *X v Journal de Geneve*, *supra* note 9.
13. *Ibid* at 538.
14. 21 Cal Rptr (3d) 663 (2004).
15. See Franz Werro, "The Right to Inform v. the Right to be Forgotten: A Transatlantic Clash" (2009) *Georgetown University Center for Transnational Legal Studies Colloquium*, Research Paper No 2, online: Social Science Research Network, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1401357> at 298 for a discussion regarding the possible reasons behind the disparity in legal policy between the U.S. and Europe. One interesting theory is that of J.Q. Whitman, who contends that American law is the product of a traditional wariness of centralized power, while European law is heavily influenced by French ideas of aristocratic honour and Germanic ideas of autonomy and self-determination.
16. *Jones v Tsige*, 2012 ONCA 32.
17. It is still too early to tell where the United Kingdom, historically the most pro–free speech country in the EU, will come down. As a recent example of where the wind may be blowing, on 30 July 2014, a House of Lords subcommittee called the ECJ's decision "unworkable" and "unreasonable": Lords Select Committee, "'Right to be forgotten' is misguided in principle and unworkable in practice, say Lords" (30 July 2014), " online: Parliament UK, <http://www.parliament.uk/business/committees/committees-a-

z/lords-select/eu-home-affairs-sub-committee-f-/news/right-to-be-forgotten-report/ >.

18. *Re Victoria Police Department*, [1995] BCIPCD No 11 (CanLII).
19. RSBC 1996, c 165.
20. The applicant had been convicted of first-degree murder in the B.C. Supreme Court and was sentenced to life imprisonment with no possibility of parole for 25 years. The B.C. Court of Appeal upheld that conviction in 1980. In March 1995, he requested copies of all police file information, including personal notes, concerning the investigation of the murder.
21. *Investigation P95-005; Personal Information accessed through the Motor Vehicle Data Base*, [1995] BCIPCD No 11.
22. See also *Order No 217-1998; British Columbia (Ministry of Finance and Corporate Relations)*, [1998] BCIPCD No 10. Like the facts in *González*, the case involved the privacy and interest of persons whose real property had been forfeited under the *Taxation Act*, to remain "forgotten". Another parallel is the commissioner's recognition that the information in question could in theory at least be obtained from other, more disparate sources, but the aggregation and organizing of that information in the form of certificate of forfeiture was a more potent threat (the analogy would be to search engine results versus random web searching).
23. One skeptic is Avner Levin, director of Ryerson University's Privacy and Cyber Crime Institute: "Google looms as 'censor-in-chief' after 'right to be forgotten' ruling", *CBC News* (14 May 2014), online: MSN News Canada <http://news.ca.msn.com/top-stories/google-looms-as-censor-in-chief-after-%e2%80%98right-to-be-forgotten%e2%80%99-ruling>.
24. For an overview of that law (as it stands today, anyway), see Wagner, *supra* note 3.
25. 2014 BCSC 953. Full disclosure: the authors' law firm is plaintiff's counsel in a proceeding adverse to Google, another proposed privacy class action.
26. 2014 BCSC 1063. By way of background, the plaintiffs in the action manufactured networking devices, and claimed that the defendants conspired with one of the plaintiffs' former engineering employees and others to design and manufacture a competing product. The plaintiffs argued that the defendants designed their competing product using the plaintiffs' trade secrets, passed off the plaintiffs' product as their own and used the plaintiffs' goodwill by advertising the plaintiffs' products on their websites. The defendants' websites through which they carry out business were the subject of numerous court orders, including one issued on December 2012 prohibiting the defendants from carrying on business through *any* website. Nevertheless, the defendants continued to sell the product on their websites in violation of court orders. The plaintiffs then applied for the subject interim injunction against Google Inc. and Google Canada Corporation. Google had complied with the plaintiffs' request to remove links to the defendants' websites from Google.ca, but refused to do the same for searches originating from other Google websites.
27. Another reason why making them the arbiters of such questions problematic is that their business is premised on collecting, then harnessing for a profit, as much information as possible.
28. Alexei Oreskovic, "Google takes steps to comply with EU's 'right to be forgotten' ruling", *Reuters* (30 May 2014), online: Yahoo! News Canada <https://ca.news.yahoo.com/google-makes-webform-removal-search-results-european-ruling-020646390—finance.html>; Alanna Petroff, "Google spells out how to be 'forgotten' in search" *CNN* (30 May 2014) online: CNN Money <http://money.cnn.com/2014/05/30/news/companies/google-europe-search/index.html>.
29. "Search removal request under data protection law in Europe", online: Google Legal > Help <https://support.google.com/legal/contact/lr_eudpa?product=websearch#>.
30. "Google in 'right to be forgotten' snub probe: Ireland tackles moans" (8 October 2014), online: <http://www.theregister.co.uk/2014/10/08/ireland_investigation_18_right_to_be_forgotten_refusals/>; "Hard to forget: Google faces problems in complying with EU privacy ruling" (1 August 2014), online: RT <http://rt.com/news/177232-eu-google-forgotten-ruling/>; "Discussing online 'right to be forgotten', Google takes European privacy tour to Spain", *The New York Times* (9 September 2014) online: <http://bits.blogs.nytimes.com/2014/09/09/discussing-online-right-to-be-forgotten-google-takes-european-privacy-tour-to-spain/?_php=true&_type=blogs&_r=0>.
31. Richard Waters, "Google U-turn over deleted newspaper links", *Financial Times* (3 July 2014) online: <http://www.ft.com/cms/s/0/64e37214-02d0-11e4-a68d-00144feab7de.html#axzz3CQCAFPsG>.
32. Rory Cellan-Jones, "EU court backs 'right to be forgotten' in Google case", *BBC News* (14 May 2014) online: BBC News Europe <http://www.bbc.com/news/world-europe-27388289>.
33. Mark Gollom, "Google looms as 'censor-in-chief' after 'right to be forgotten' ruling", *CBC News* (14 May 2014) online: CBC News World <http://www.cbc.ca/news/world/google-looms-as-censor-in-chief-after-right-to-be-forgotten-ruling-1.2641714>.
34. Peter Fleischer, "Foggy Thinking about the Right to Oblivion" (9 March 2011), online: Peter Fleischer Blogspot: <http://peterfleischer.blogspot.ca/ 2011/03/foggy-thinking-about-right-to-oblivion.html>.
35. Think of de-indexing as the Internet equivalent of pulling and destroying parts of a library's card catalogue. The material is still "in the library", somewhere, but practically speaking no one will ever find it. P.S.: for readers (if any) under 25 years old, a

library is where most people used to go to learn things. A few of us still do it, although it is one of those habits—like smoking—that a person doesn't draw attention to, except to like-minded freaks.

36. Similarly, during his lifetime and in the surrounding era, Oscar Wilde was disgraced and imprisoned after his trial related to his homosexuality. Media reports of the trial and outcome were no doubt of interest to the public at the time. Should Mr. Wilde be allowed to rest in peace now that homosexuality is viewed differently, and his works of literature are his more "relevant" historical feats? Would he, if he were still alive, even *want* that information forgotten? Does his estate have a say in it? [*We hope not, as Mr. Wilde was the subject of "Legal Anecdotes and Miscellanea" (2014) 72 Advocate 615 – Asst. Ed.*]
37. See Joe Nocera, "Try a little common sense", *The New York Times* (13 June 2014) online: <http://mobile.nytimes.com/2014/06/14/opinion/joe-nocera-some-material-ought-to-be-delinked-by-google.html?emc=edit_tnt_20140614&nlid=54912993&tntemail0=y&_r=0&referrer>.
38. Jeffrey Rosen, "Symposium Issue: The Right to Be Forgotten" (2012) 64 Stan L Rev 88 at 88, online: <http://www.stanfordlawreview.org/online/privacy-paradox/right-to-be-forgotten>.
39. A Rouvroy, "Réinventer l'Art d'Oublier et de se Faire Oublier dans la Société de l'Information? Version augmentée" (2008), online: <http://works.bepress.com/antoinette_rouvroy/5>, cited in Koops, *supra* note 4 at 233.
40. For a further discussion, see Omer Tene, "Vint Cerf Is Wrong: Privacy Is Not an Anomaly" (22 November 2013), online: Privacy Association, <https://privacyassociation.org/news/a/privacy-is-not-an-anomaly/>.
41. Jesse Kline, "A right to be 'forgotten' is a right to censor others", *National Post* (3 July 2014) online: <http://fullcomment.nationalpost.com/2014/07/03/jesse-kline-a-right-to-be-forgotten-is-a-right-to-censor-others/>.