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CS 183: Privacy in the Digital Age
Professor O'Brien
Assignment 3

Final Paper Proposal

Central Research Question

This paper will explore and analyze the challenges and limitations regarding *the right to be forgotten* in the European Union (EU) and the United States (US). The current policies, specific court cases, and challenges of both governing bodies relating to the right to be forgotten will be compared and contrasted. Ultimately, this paper will identify the established policies (or lack thereof) regarding the right to be forgotten in the EU and US, provide reasonings for the similarities or differences between them, and offer an outlook on where policy concerning this matter may be heading in the future.

Motivation and Context

With the insurgence of the internet in the past two decades, a great part of society has transitioned to being online. Many people have turned to the internet and online platforms for getting news, academia or work related information, being in touch with pop-culture, or simply interacting with friends and others. As such, a tremendous amount of data, whether professional or personal, has become digitized and posted onto the web. Many argue, and what is disclaimed on almost every post-enabling online platform, that posting something online forfeits the right, to a certain extent, for it to be private. In other words, when one willingly posts something online, they are acknowledging and agreeing to the fact that they are granting other people access to it (i.e. an article on the NewYorkTimes or a picture on Instagram). This, however, introduces the ethical and procedural problems of removing content posted online and, in turn, has sparked the emergence of the right to be forgotten.

The right to be forgotten is a concept that has been put under the spotlight in the past decade due to the ever increasing amount of online content and online social activity. Namely, the right to be forgotten embodies the right of an individual to remove their personal information from search engines and online platforms. In the case where one would like to remove personal data that they previously posted onto the internet or links about them that appear on search engines, the right to be forgotten declares this just and requires such information to be completely erased. The backbone of the right to be forgotten is the right to privacy: the right of an individual to dictate how their personal information is collected, processed, and shared. However, the right to be forgotten differs from the right to privacy in that some argue the right to be forgotten impedes on freedom of expression, access to information, and may even lead to a form of censorship. The main challenge regarding the right to be forgotten is determining exactly what kind of information individuals should be able to remove. Should one have the right to require a search engine to remove articles that walk the fine line of slander? Should one have the right to require a social media platform to remove certain posts or pictures of theirs? It's questions similar to these that are grappled with when discussing the right to be forgotten and showcase the ethical and legal concerns regarding it.

The EU first ruled for the right to be forgotten in May 2014 and has since established the legislation for the *right to erasure* in the General Data Protection Regulation (GDPR) [1]. The same cannot be said regarding the US. Apart from one Supreme Court case regarding the father of a deceased rape victim suing a TV station for showcasing the victim's (Cox Broadcasting Corp. v. Cohn, 1975) and a few other State Court cases in the 20th century, the right to be forgotten has not reached the United States Supreme Court. Although, in 2017, New York state

legislators proposed a bill with similar rhetoric to the right to be forgotten, regarding the removal of faulty statements from the internet, but it did not garner much support [2].

Primary Sources

This paper will analyze a multitude of primary resources. First and foremost, the GDPR, specifically Article 17, and the Court of Justice of the European Union (CJEU) case *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (2014)* will be analyzed to understand the precedent and the extent of the right to be forgotten in the EU. This case is what led to the inclusion of the right to erasure in the GDPR. Other more recent CJEU cases that will shed light on the limitations of the right to be forgotten in the EU are *GC et al v. CNIL (2019)* and *CNIL v. Google (2015)* [3].

In terms of the US, *Cox Broadcasting Corp. v. Cohn (1975)* is the sole US Supreme Court case that falls in the realm of the right to be forgotten. This case, in addition to more recent California State Court cases, *Doe v. Google Inc. (2016)* and *Barber v. Google Inc. (2014)*, will be analyzed to provide reasonings as to why the right to be forgotten has made much less progress in the US than in the EU. Moreover, New York Assembly Bill 5323 will be analyzed to get a better sense of how the US may, or may not, approach future legislation regarding the right to be forgotten. Furthermore, if it is deemed to be in the scope of this paper, a study conducted by Pew Research Center which polled Americans for their opinions on the right to be forgotten may also be analyzed [4].

Analysis

All of the primary sources mentioned above will be used and analyzed in order to compare and contrast the legal sentiment regarding the right to be forgotten in the EU and US. The CJEU cases which ruled in favor of the right to be forgotten will be contrasted with the US

State Court cases that ruled against this right. The specific rhetoric used in each case will be analyzed in order to determine the precedents they have set for their respective governing bodies. In turn, these precedents will be used to identify the limitations and challenges that remain regarding the right to be forgotten in both the EU and the US. The US cases, and possibly the aforementioned study, will also be used to hypothesize future US legislation regarding the right to be forgotten.

References

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<https://mttlr.org/2020/02/why-the-right-to-be-forgotten-wont-make-it-to-the-united-states/>.
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