

LIS 550

Information and Society

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Module 6 Lecture 2

Privacy & the Right to Be Forgotten

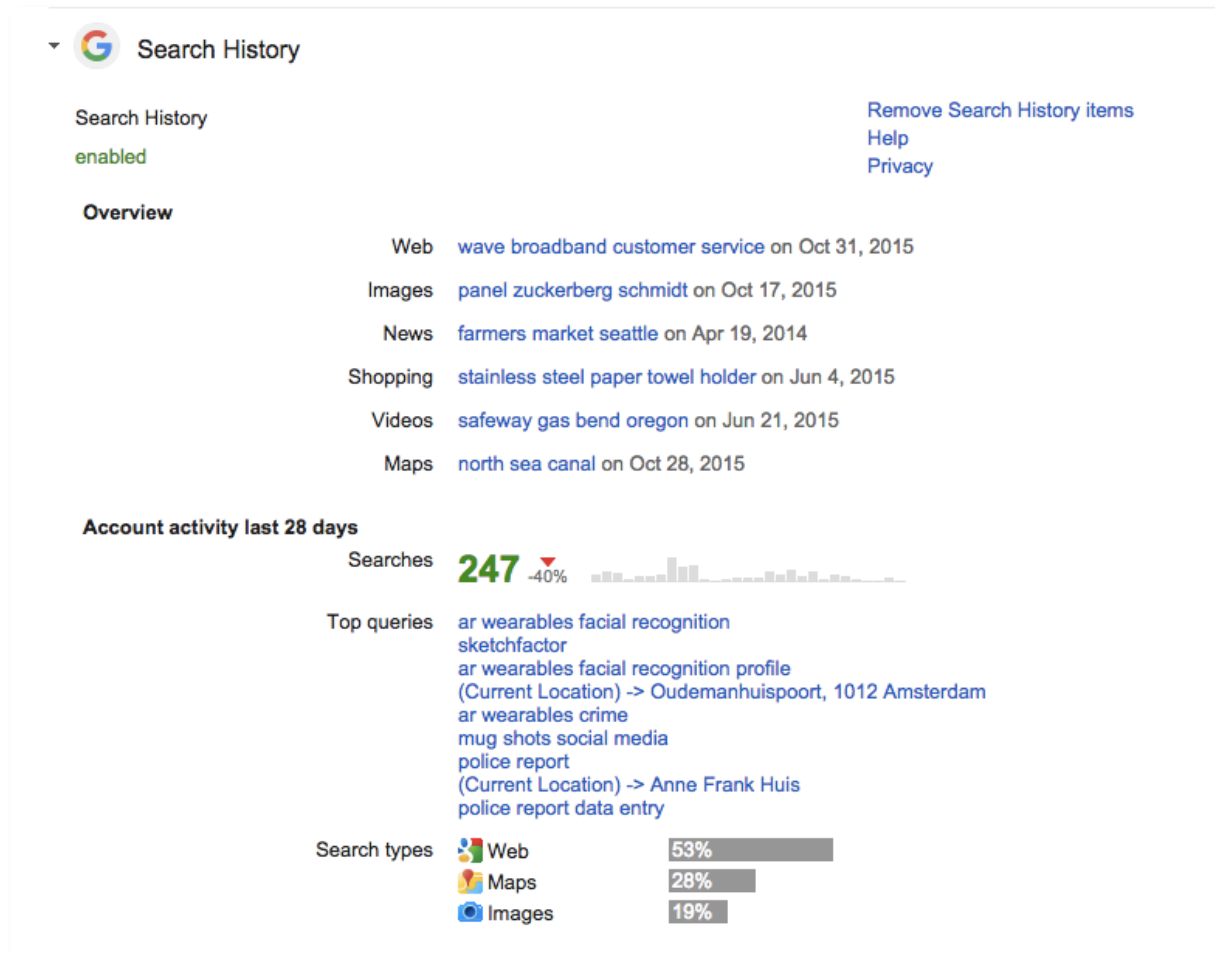
- Introduction – the age of “default” remembering
- Remembering and forgetting for information professionals
- The Right to Be Forgotten in EU policy
- Application and implications of the RTBF
- The social value of forgetfulness
- Information values in tension

Remembering and Forgetting

The Internet and associated technologies have increased the amount of “default remembering” of both incidental and vital information.

Remembering is central to many online businesses

(see google.com/dashboard)



Remembering and Forgetting

- Implications for a range of values, including privacy, free expression, security, and others
- Also poses questions about human flourishing and freedom

Remembering and Forgetting

- Powerful implications for librarians and other information stewards
- Forgetting – includes “removal” and “selection”
- Information science – often concerned with access to information, but *all* information?

The Right to Be Forgotten

1. European Data Protection Directive (1995)

- Article 12 of Directive 95/46/EC
- European Convention on Human Rights

2. Proposed General Data Protection Regulation

- Article 17

Includes right for “data subjects” to require “data controllers” to disclose how information is used and to “erase” data.

General Data Protection Directive

Article 17

Right to be forgotten and to erasure

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, especially in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:
 - a. the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
 - b. the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;
 - c. the data subject objects to the processing of personal data pursuant to Article 19
 - d. the processing of the data does not comply with this Regulation for other reasons.

Origins

- **Droit D'Oubli** – “Right to Oblivion” a French law concerning the right to have criminal conviction data removed from public record after set amount of time
- **Warren & Brandeis (1890)** – “right to be let alone”
- **Melvin v. Reid (1931)** – former prostitute wins right to have film about her life suppressed

Application of the Right to Be Forgotten

Google Spain SL, Google, Inc. v. Agencia Española de Protección de Datos, Mario Costeja González

Aka “Costeja”

- Costeja-González sued Google and a Spanish newspaper in 2009 for a 1998 story
- Court obligated Google to “delink” search results
- Did not require the publisher to remove information

Implications of “Costeja”

- Search engines bear the brunt of responsibilities for Right to Be Forgotten
 - Why search engines?
- Proponents see this as a “win” for privacy
 - Privacy as “control” over information
- Arguably contributes to “flourishing” - enables people to move on, escape mistakes of their pasts
- Critics worry about freedom of expression, loss of history, journalistic freedom, etc.
- **Interesting tension between conflicting rights and values: i.e. speech and flourishing**

The Right to Be Forgotten

- Cultural power
 - Who can *have* what?
 - Who can *know* what?
 - Who can *say* what?
 - Who can *do* what?
- Google – presumption as archivist of last resort

The Social Value of Forgetting

Blanchette & Johnson

- “Forgetting” is deeply rooted in socio-cultural and economic practices
 - Human memory -“forgive and forget”
 - Physical data – expensive, hard to access, routinely destroyed
- Electronic information is cheap to retain, IT encourages accumulation, deters deletion
- Data economy is based on accumulation and analysis of detailed information (commercial/state)
- Challenges cherished cultural values:
 - Second chances/starting over

The Social Value of Forgetting

- “If the purpose is non-fraudulent, is not attempt to escape legitimate debts and responsibilities, then the formation of new identifies is perfectly consistent with [] notions of autonomy...” (Gandy, 1993, p. 285)
- “...one’s past is always present...This can create a class of permanently stigmatized persons.” (Marx, 1988, p. 223)

The Social Value of Forgetting

- “Panopticism” – where all is known about everyone
- Chilling effect on expression, choice, autonomy
- Economic consequences. Obstacle to “flourishing”
- Privacy as an *individual* right vs. privacy as a *social good*.
 - Individual v. shared values

The Social Value of Forgetting

Examples of Social Goods

- **Bankruptcy law:** making debts “vanish”
- **Juvenile records sealing:** second chances, forgiveness
- **Credit reports:** ability to recover from mistakes and participate in economic life

Implications for Privacy

- Privacy rights often defined as “control” over personal data
- Right to Be Forgotten asserts power of individuals to control data about them
- Liberation from past mistakes and embarrassments
- Autonomy – freedom to act, opportunity to flourish

Values in Conflict

Freedom of Speech and Free Press

- Eugene Volokh and free speech “maximalism”
 - Privacy law and the right to stop people from speaking about you

Values in Conflict

Rewriting History



Values in Conflict

Security “Trumps” Privacy

- Ken Himma: The most important value is the value of one's own life and safety

Conclusion

- The Right to Be Forgotten is a powerful framework that is sparking dialog
- Sets up tensions between US and EU law (i.e. Schrems “safe harbor” decision)
 - More to come re: EU/US privacy frameworks
- Remembering/forgetting - implications for socio-cultural practices
- Tensions between privacy and other values

Discussion Prompt

Remembering and forgetting is a continual tension in the information world, involving politics and power dynamics.

- **Where in your group project does an interplay between remembering and forgetting arise?**
 - Consider the different stakeholder groups and what this interplay means to them.
- If not your group project, choose an example from your professional life where you have seen this interplay and tension.