Placing the “Right to be Forgotten” In a U.S. Context  
(working title)

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Introduction

The “right to be forgotten” refers to the concept, as laid out in the European Court of Justice’s ruling in Case C-131/12 Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja González, that an individual can request the takedown of personally damaging links from search engines. The ruling established the right to be forgotten as a human right, one which protects an individual from perpetual persecution for past incidents.

While the term was only recently coined, the concept was first considered in the United States in the 1931 case Melvin v. Reid. In that case, the California Court of Appeals strongly defended an individual’s right to “pursue and obtain safety and happiness.” A subsequent case in the Second Circuit in 1940, Sidis v. F-R Publication Corporation, however, found limits to an individual’s ability to control information about oneself. The U.S. legal tradition’s heavy emphasis on freedom of expression and speech is thus greatly at odds with the right to be forgotten.

From a technological viewpoint, the right to be forgotten is potentially troublesome. Requiring search engines to suppress results creates a heavy compliance burden for these services. Furthermore, it seems strange that search engines are the
vehicles being targeted for enforcement of the right – are there not more technologically feasible or sound ways to approach this? While seemingly simple to implement, the actual effects on search engines’ algorithms should be examined.

Consider Google’s PageRank algorithm. Google uses PageRank to determine the order to list links on a search result page. The algorithm works by generating a graph of all webpages, where each page is used as a node and hyperlinks act as edges between page nodes. Highly connected nodes are ranked higher under PageRank because each link can be construed as a vote for that page. Highly ranked pages confer more votes when they link to another page. After numerous iterations, a page is assigned a rank, and search results are displayed according to these ranks. A major concern is that, depending on how Google actually handles forgetting links, PageRank results might vastly differ with the removal of a forgotten link. If a previously highly ranked page is forgotten, then pages that relied on its vote may drop in rank. Since the algorithm relies on iterating until the PageRanks converge, a single deletion can have a wide effect on subsequent iterations.

Finally, those in favor of the right emphasize the new possibility of harm now that sensitive information, though public in principle, has become actually accessible through online search engines. A commonly offered example is the older gentleman who is denied employment opportunities because of a misdemeanor from his teenage years. Conversely, others highlight the supremacy of free speech and the public interest over an individual's private concerns. The right to be forgotten involves the age-old conflict between personal harm and the public interest but is especially interesting because it lacks a readily accessible analogue equivalent.
Preliminary Readings

There has been a wealth of information written about the right to be forgotten. What follows is simply a preliminary list to begin my research¹:

- Case C-131/12 Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja González [2014] [link]
- Factsheet on the “Right to be Forgotten” ruling (C-131/12) [link]
- Rosen, Jeffrey. The Right to Be Forgotten. [link]
- Bennett, Steven C. "Right to Be Forgotten: Reconciling EU and US Perspectives, The." [link]

A brief perusal of Google Scholar has yielded an immense amount of potential resources. [link]

Deliverables

The main deliverable for my senior project will be an extensive paper on my proposed topic, spanning approximately 15 to 20 pages. First, I will introduce the right to be forgotten and discuss its legal and historical background. The paper will next consider the technological issues surrounding the right to be forgotten, including an examination of its soundness. I will explore what steps, if any, Google has taken to limit the impact that complying with take-down requests might have on its PageRank algorithm. Next, a normative section will focus on the right’s social implications, in addition to weighing its pros and cons. The paper will conclude with an examination of

¹ Proper citations to come.
potential future developments and ramifications. As of yet, I have not sufficiently
developed my own view on the right, but I imagine I will explicate that as the final
section.

As a potential stretch goal, I envision a website offering an easily digestible,
visually attractive introduction to the right to be forgotten. The site may also offer
resources to both pro- and anti-right camps, such as ways to lobby for and against the
right and how to complete take-down requests.