

# Handbook of Research on Redesigning the Future of Internet Architectures

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## Chapter 2

# Internet Identity and the Right to be Forgotten: International Trends and Regulatory Perspectives

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### **ABSTRACT:**

*In this chapter, the analysis will focus on the concept of digital identity which is evolving and changing, based on the experiences that every individual lives. The chapter further highlights how the digital identity includes the fundamental human rights such as the right to a name, the right of reply, the right to protection of personal data and the right to an image. In translating the right to personal identity to our digitalized era, with its massive use of social networks, we have added to the related decalogue of rights the right to oblivion, equally called right to be forgotten. Given the complexity of the subject, the chapter develops an analysis of the actual international regulatory trends.*

### **1. PRELIMINARY CONSIDERATIONS**

The reflections that follow come from an overall view, the key issue in, on difficulties to identify what the right digital identity. Finding tiring and complex because of the difficulty to get to know the instrument in question; then that is itself the

reason for the existence of this new law. After trying to define this right you will go to a careful and detailed analysis of one of the consequences that flow from it: the right to be forgotten. As we known, Internet is a strategic driver for the Information Society, designed by the European Community (EC), the objectives of social inclu-

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## ***Internet Identity and the Right to be Forgotten***

sion and participation, having implications on the very essence of the individual, stimulate the development of new theories regarding personal identity on the Web. In fact, the advent of the Internet has meant a revolution for the contemporary era, having given rise to an impressive series of changes in social life and, above all, in terms of social relations. If the use of the network was merely associated, some time ago, with website browsing in order to acquire information, now this common approach has radically changed.

Internet is no longer a conglomeration of websites independent of one another, but must be considered as a combination of technological capabilities reached by man in the dissemination and sharing of information as regards general knowledge. We can look to the Internet as an environment that enables a user to experience new forms of contact, relationship and personal expression, such as through the social networks, which have become not just beaches for curious tourists passing through, but a habitat in constant expansion. In this way, the digital media have become contexts of the utilisation of information, as well as alternative spaces to daily reality for the use of a great range of services. Their introduction has redefined the concepts of space and time and now reflects the very essence of the individual.

The goal, then, would be to put the e-individual at the center of the information society in order to avoid/limit their exclusion from the technological evolution, proposing models of interaction and use capable of guaranteeing universal access to content and services offered over Internet.

If it is true that the Internet stands as the greatest instrument of social inclusion, it is also true that *sollava inievitabilmente* profiles problematic about the very nature of the individual. The technology change our habits and our lives, but in the face of the many benefits accruing from the application of these new techniques are beginning to manifest “special situations” defined by some authors as *psychotechnologies*. The use of new equipment interacts with our psychic apparatus

and for the first time in the history of mankind, man has invented a device that forces him to adapt to “his” way of “thinking”; the use of the personal computer requires a real mental adaptation to its operation and consequently pushes the subject to adjust their cognitive functions to operation of the machine. The use of the network and the various applications is able to determine an expansion and a wrong perception of the boundaries of the self. Caught in the vortex of social relations, desperately divide our limited attention, allowing fragments of our consciousness to every person or thing that requires our time. In doing so, we risk losing slowly in the network of our identity.

Internet was celebrated as the site of a utopian social space where age, gender and ethnicity would be infinitely re-writable, allowing the subject to experience postmodern forms of identity fluid and multiple. In the social web, where social processes are organized right on the network, users have the opportunity to express themselves and expose themselves. The widespread use and importance of social networks has shifted so the online identity to a more real, blurring the boundaries between online and offline. It should, however, from a fundamental question: what is digital identity? It is defined as the identity consists of a user at the online virtual communities, often of a playful, focused on a virtual dimension, as opposed to the real one. Real and virtual are not in opposition, they are not good and the bad, the positive and the dangerous, the safe and the uncertain, but two types of experiences, modeling, knowledge of different realities. Digital identity has subsequently adopted a more general meaning of social identity, which the user sets on the Internet, becoming synonymous with the online identity. While some people use their real names digital identity, others prefer to remain anonymous, identifying themselves by means of pseudonyms. The term *avatar*, which is used just to indicate a size of digital imagery, in which a user provides a fantastic representation of itself, is also of type visual.

Much of the literature (Turkle, 2011) that argue the separation between virtual and real criticism of the social network claiming that people are swapping the face to face contact with the digital one. This duality arises from injury to see how to separate physical and digital environment, such as a zero-sum balance where the time and energy spent on a contact type are subtracted to another. There are digital and material realities, but only one actually composed of atoms and bits.

In essence, a person digital is the digital representation of an actual individual, which can be connected to this individual real and includes a sufficient amount of data (relevant) to be used, in a specific field and the purpose of its use, as delegation individual. An example is our Facebook profile that reflects who we know and what we do offline.

Roger Clarke (1994, pp. 77-92) has identified two types of digital identity: designed and sets, whose definitions are:

1. **Designed:** it is the one created by the same individual, which transfers it to the other by means of data (for example: creating a personal blog, a personal page on a social network, etc.).
2. **Sets:** that is projected onto the person by means of data from external agencies such as commercial companies or government agencies (eg, degree of solvency for the purpose of granting loans, health status for insurance or credit, etc.).

We could say, well, ultimately that the 'digital identity includes essential aspects from us: Some are generic (our nature as men), more specific (who we are, what we do etc..) And also comes complete with aspects related to the way we to use the web and other connected to them, also linked to the operation of the infrastructure

## 2. DIGITAL IDENTITY

The digital media (Comode, Krishnamurthy & Willinger, 2010) have become contexts of the use of information, as well as spaces alternative to everyday reality for leisure and free time. Facebook, Twitter (Humpreys, Gill & Krishnamurthy, 2013, pp. 843-857.) and YouTube have introduced a new way of conceiving digital identity, no longer as merely self-awareness but as cyber-sociality. In fact, the digital social groups to which the individual belongs represent a system of coordinates, where each new coordinate identifies the individual in a more precise way.

If we look at Second Life, it is a virtual world where anyone can build a second life, choosing their name, gender, self-image through the construction of their physical appearance. This social network is a virtual environment that can be accessed at the same time by thousands of different users who have an avatar, an identity that is represented by a character on the screen. The avatar has the ability and the opportunity to build a new communicative and relational set-up regardless of its origin and its real personality. At the same time the avatar has a relational space that is much wider than that of the real life of the user it represents. The avatar can in some cases become a mask to wear and remove when the interpretation is over, as theorized by Erving Goffman in 1969, according to whom each of us plays their part within a digital frame. In our era, however, that of the digital revolution, an interesting and new interpretation of the eternal question might be: who am I on the Web? The most cynical would probably say that on the Web we are nothing more than a few records in a large database, a username, a password and little more. However, these views can be added to the list of "unsatisfactory answers".

So, some additional key points to analyzing such a broad issue are: the vulnerability of our

identity on the Internet and the implications it generates. The juridical issue at the basis of the digital identity of an individual is related to his or her protection, that is to say whether or not they are an autonomous legal entity. It is important to understand if there is a violation of the right to the personal identity of the individual of which the avatar is the expression. There are two practical Italian cases which could be useful to understand this issue:

- 1) The story of a young fifteen-year-old Sicilian, who in 2009 realized that on Badoo there was an account that she had never created, including photos of her and an accessible profile (SiciliaToday, 2009). Unknown computer users had in fact created an account and registered a profile on “Badoo” without her knowledge, also publishing photos depicting her in inappropriate behaviour. Following the initial investigation of the Caltagirone police, the locality of the registration was identified and further investigation identified another teenager of 16 years, rival in love of the unaware victim, whose objective was to denigrate the girl through the network, especially in the eyes of his “competitor”.
- 2) Another example is the case of a famous Italian soccer player, Alessandro Del Piero, who discovered in 2009 the theft of his identity on Facebook (Zeus news, 2009). Besides the theft of identity, the thief clearly expressed neo-Nazi sympathies, which the original Del Piero categorically denied. In fact, fake celebrities on social networks are far from rare and can be a source of problems. The footballer took legal action against Facebook to protect his image.

Italian legislation protects the right of everyone to not have the authorship of his actions disclaimed and not to be attributed the authorship of someone else’s actions (e.g., through untrue

posts on Facebook), that is the right to not see his individual personality misrepresented. From this protection it is evident that personal identity is not only constituted by objective data, but also by the social projection of the personality of the individual. In this case the protected property is the social projection of personal identity (Dogliotti, 1980, pp. 965-974.). However, it should be noted that the social projection of a person is multiplied in the society we live in today, where social networks and, more generally, social relationships, become mass communication. By using Facebook, Twitter, YouTube, Second Life and other role play games, we see our identity fragmented into many small particles, which are beyond our control and which can bond with other particles of information created unbeknown to us. Biology teaches us that at the end of the process a new nucleus is formed that contains the DNA of the new personal identity.

An authoritative Italian doctrine states that: The spread of increasingly large and specialized collections of personal data, made for various purposes and by different subjects, produces various forms of dispossession and fragmentation, displacing oneself in diversified places ... the unity of people is broken and in its place we find many “electronic persons”, just as many persons created by the market ... as there are interests that lead to the collection of information. We are becoming abstractions in cyberspace, we are dealing with a multiplied individual (Rodotà, 1997, pp. 615-619).

So the very identity itself is quite changeable, constantly evolving and transforming on the basis of the experiences of each individual. A well-known sociologist, Bauman (2009), has defined identity in the contemporary era by almost equating it to a garment which is worn until it is needed, while it suits the wearer. Considered in this way, the right to personal identity brings with it a number of corollaries such as: the right to a name (Ricci, 2008, pp. 77-99), the right to the protection of personal data (Buttarelli, 1997) and the right to personal image (Vercellone, 1959). If

we translate the right to personal identity to our digitalized era, with its massive use of social networks, we need to add to the related Decalogue of rights the right to oblivion, equally called right to be forgotten. This is the right for natural persons to have information about them deleted after a certain period of time.

## **2.1 DIGITAL IDENTITY BETWEEN OLD AND NEW CONTINENT**

In London, a decade ago, in 2003, two young English persons met each other in *SecondLife*, they fell in love and got married. But when she found out that her husband's avatar had frequented an avatar call girl, she hired an avatar-detective. However, he discovered yet another virtual betrayal. In this case, the divorce attorney was absolutely real.

According to the Daily Mail (2008), the couple spent more time together on the Internet than they did in real life. And the lawyer was not at all surprised. He said it was the second case of divorce connected to Second Life that had happened in a week. The betrayed woman stressed that the Internet had not ruined her life, but whilst she had turned the page and started a new life with another husband, the Internet does not forget. The burden of betrayal, which she would like to forget, still remains through posts and situations of Second Life which reoccur.

On 25 January 2012, the European Commission officially unveiled its proposals for the new European legal framework in the field of data protection. The proposal consists of a Regulation, which will replace EU Directive 95/46/EC, and a Directive which will regulate the data treatment for purposes of law and order (currently excluded from the application field of Directive 95/46/EC). The procedure for final approval of the two regulatory instruments will involve the joint intervention of the European Parliament and the EU Council in accordance with the procedure known as co-decision (now defined by the Treaty of Lisbon

as legislative procedure). Annex 53 of the EU Directive states that "every person shall have the right to rectify the data concerning him or her and the "right to be forgotten" if the retention of such data does not comply with this Regulation. In particular, individuals should have the right to have their data fully removed and no longer processed when it is no longer needed for the purposes for which it was collected or otherwise processed (...). Furthermore, pursuant to Article 17, the data controller has no obligation to proceed with the deletion of data, since the retention is necessary "(a) for the exercise of the right to freedom of expression under Article 80 (...)."

Nevertheless, this intervention by the EU represents a big step forward, although we are still far from a solution to the problem. According to Mayer Schonberger (2009), Professor of Internet Governance and Regulation at the Oxford Internet Institute, a solution should be sought in education and technology. The latter should allow the publication of content on the net with a pre-established expiry, while the former should involve convincing Internet users not to abandon for eternity fragments of their current life that are destined to become valuable pieces of the mosaic of their own digital identity.

In this direction, in Italy in 2009, a bill was presented which foresaw that after a certain period of time, varying according to the seriousness of the offense, and on condition that there is a written consent of the interested party, the images and data also of a juridical nature can no longer be diffused or maintained. In fact these would enable, directly or indirectly, the identification of the suspected or accused on the Internet pages freely accessible to users or by means of search engines external to the website source. California has enacted the so-called Eraser Law (Senate Bill No. 568, Chapter 336) for those under 18. A nickname was never so appropriate. From 2015, in fact, teenagers will be able to cancel their compromising digital past (such as embarrassing photos, untruthful comments or

declarations of love entrusted to the network and destined to survive for ever). The law was enacted by the Governor of California Jerry Brown and will come into force on 1 January 2015, giving time for websites to adapt to the new legislation. This law requires operators to prepare the forms through which deletion of content may be requested. Furthermore, there is a clear obligation to publicize these forms.

Despite the good intentions, the law seems to be somewhat out of context because it does not consider the very nature of the Internet and above all the dynamics of information flow on the net. In fact, the content posted by a repentant minor, requesting its removal, could be bounced everywhere. It might very well have given rise to conversations, should they have been transformed and launched again on other sites, and the California law does not take this into account.

It would appear somewhat eccentric, though, that in addition to the need to know the age of the users, the sites will need to know whether or not the children live in California. This is as if to anchor the right to be forgotten to a right which is mostly sectorial and territorial. The attention is shifted from the protection of data to the safeguarding of minors. But then, for the Aristotelian syllogism, should this issue not be protected by the privacy code, but safeguarded as a fundamental right of the individual (be he young, adult, elderly)? But then, who am I and what safeguards can I obtain for the information about myself? This is the question that man has always posed at some stage of his existence. There are thousands of answers, but there is not one that fully satisfies us, since when we give an answer we have already changed again, and we have to reply to the same question with a different answer.

Herodotus might have commented that not only great and wondrous works, but also human events of common mortals deserve not to fade with time.

### **3. THE RIGHT TO BE FORGOTTEN: BACKGROUND AND SOCIAL IMPLICATIONS**

If we translate the right to personal identity to our digitalized era, with its massive use of social networks, we need to add to the related Decalogue of rights the right to oblivion, equally called “*right to be forgotten*”. This is the right for natural persons to have information about them deleted from online archives, even after a certain period of time, when the personal information may appear one-sided, unfair or may harm image or reputation. Note, techniques for enabling for an amnesic Internet are still a challenge.

If personal identity is a summary of the rights already mentioned through which the individual protects him/herself, it is certain that a variable which is not easily manageable on the Internet is *time*. As we all know, time plays a crucial role: the person is what she or he is at a particular historical moment and her or his identity changes with time. In fact, the events reported in posts, forums and videos on YouTube, related to a certain period, may no longer match the personality of a subject at a different historical moment. As is now well established, the Internet cancels space-time. Not only does the network change the amount, but also, and especially, the nature of communication. The information circulating is of a great quantity, but the difference lies in the easy availability of this information, which most of the time is deprived of source and is isolated from context. That is why it is felt that there is the need for a right to oblivion, intended as a right to be forgotten, i.e., the right for citizens to demand the deletion of any personal data that circulate on social networks and on the network in general.

It is undeniable that extension of the right to be forgotten to the world of the Web has turned out to be more complex than was foreseen, prompting numerous debates and controversy. But what if the pictures, data and personal information that it can pull out about you appear unfair, one-sided or just

plain wrong? More and more people are claiming they have a right to be forgotten and are even trying to delete themselves from the Web. The issue appears poised to generate legal, technological and moral wrangling for years to come, putting in contrast the right to oblivion on the one hand and the right to information and transparency on the other. In fact, it is still difficult to define from a juridical point of view: (a) up to how many years from the fact can the individual exercise the right to obtain deletion of her or his data (b) what are the elements which, even after a certain amount of time, could justify the continuing existence of these data in online archives. On the other hand, it should be acknowledged that effectively there exist issues related to the publication of data and in search engines which would otherwise be difficult to find and to access.

### **3.1 The New European Legislation**

The EU proposal of a new juridical framework regarding the protection of personal data is made up of two distinct legislative acts: a) a Regulation of the European Parliament and of the Council regarding the protection of individuals with regard to the processing of personal data and of the free movement of such data b) a Directive of the European Parliament and of the Council concerning the protection of individuals with regard to the processing of personal data by authorities for the purposes of prevention, investigation, detection and prosecution of criminal offenses or the execution of legal sanctions, and the free circulation of these data.

The Regulation, put forward on January 25, 2012 by Viviane Reding, the Vice President of the European Commission, was intended to be stricter than the 1995 Data Protection Directive 95/46/EC. The EU Regulation foresees the right to ask service providers to delete the personal information which is collected by data brokers under a users' consent clause in order to strengthen user information protection. The right to be forgotten also includes

the notion of not to be searched for, and prescription of information. The regulation recommends service providers to request consent from their users when they deal with, their personal information such as medical history, criminal records, location and their orientation for implementing a marketing strategy. On failing to comply with the regulation, service providers would be fined up to €1 million or 2% of their sales figures. V. Reding explained that a change of regulations, related to the past Internet environment, is inevitable due to the changes of digital circumstances such as technological development and globalization. The proposal includes the following:

- Automated control of personal information
- Regulation to be applied not only to companies based in the EU area, but also to companies dealing with personal information of EU citizens. Even if the physical server of company processing data is located outside Europe. EU rules apply to search engine operators if they have a branch or a subsidiary in a Member State.
- Request of users' consent before collecting personal information
- Unified regulation applied to the entire EU
- Mandatory reporting when information leakage occurs
- Transferrable personal information when users change their Internet service providers.
- As a response to the EU proposal, there have been several objections to the Regulation. Corporations are opposed to it, claiming that the strict Internet standard would worsen the economic situation of the EU and delay the development of the Internet industry, which depends critically on the use of individual data to develop, improve, and fund services and content (Gross, 2012). Other people have raised doubts on how to implement the right to be forgotten, it being difficult to assume that

social networks like Facebook should have some form of control over what users do with information freely posted by other users (Warman, 2009). The Centre of Digital Democracy (CDD) has voiced that it would not be easy for the EU to reach an agreement with the Internet service providers. The General Data Protection Regulation will replace Directive 95/46/EC, putting in place a comprehensive reform for the protection of users' privacy on the Web that should be transposed into national law by all EU member states by 2015. In fact, it should be recalled that EU regulations have a general application and are binding in all their parts and directly applicable in national legislation. It might be interesting, with the aim of a thorough assessment of the proposal, to examine the institutional motives which inspired the EU legislator to put forward the proposal. These were:

- To address the regulatory fragmentation caused by divergent implementations of Directive 95/46/EC by Member States, establishing a more solid and coherent legal framework that guarantees individuals' control over their personal data and strengthens the legal and operational certainty for the economic actors and public authorities;
- To respond better to the challenges posed by the rapid evolution of new technologies (especially online) and the growing globalization which have transformed not only the economy but also social relations, changing the ways and means of processing personal data;
- To consequently establish a climate of trust in online environments, in order to stimulate economic development by providing the necessary drive for growth, employment and innovation in Europe.

The proposal encompasses the right to be forgotten and to erase data (Article 17), which will help stakeholders to better control information concerning them. They will be able to decide what information can continue to circulate and delete it if there are no legitimate reasons for its maintenance (e.g., legal obligations, the right to freedom of expression, public interest in the field of healthcare, for reasons of historical, statistical and scientific research, etc.). The online service providers will be forced to move from the opt-out rule (user data, unless on explicit request, belong to the supplier) to that of opt-in (the data belong only to the user, and it is for him/her to decide how to use them). The reform also foresees the obligation for social networks to prove that the retention of a certain piece of information is needed and to warn the user (alert within 24 hours) in case this information is stolen.

Many have criticized the reform launched by the EU and the underlying assumptions which are at the basis of the right to be forgotten, which in their opinion would deprive the network of its original essence. The Internet has become a huge repository of information, the only one of its kind, where everything is preserved and nothing is forgotten. The fact remains that this intervention by Europe represents a new way in which the old continent has interpreted the right to oblivion and made it operational on the Internet.

In this same context it is essential to mention the recent and much debated Judgment of the Court of Justice of the European Union 13 May 2014, in Case C-131/12, according to which an Internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages, published by third parties. Thus, if following a search made on the basis of a person's name, the list of results displays a link to a web page which contains information on the person in question, the very same data subject may directly approach the operator exercising the right to be forgotten. Where the operator does not grant the request, the data subject may bring the

matter before the competent authorities in order to obtain, under certain conditions, the removal of that link from the list of results. The judgement of the Court of Justice of the European Union, for the first time, highlights some important key points:

- In operating their search service, Google is processing personal data and is acting as a data processor and controller under the terms of the European Data Protection Directive;
- Following this, search engines may have to remove links to web pages containing data which appear to be *inadequate, irrelevant, or no longer relevant*, or *excessive* in relation to the purposes for which they were processed and in the light of the time that has elapsed.
- A search provider can be required to consider removal regardless of the legal status of the personal information on the third party web pages.
- The judgement highlights the significance of interference to personal data rights that can be caused by the availability of the links associated with a name.
- The data subject's rights also override, as a general rule, the legitimate interest of Internet users to access information.
- A fair balance should be sought between these interests depending a) on the nature of the information in question and its sensitivity for the individual's private life and b) on the interest in communicating the information to the public, an interest which may vary, according to the role played by the data subject in public life.

The implications of the judgment, as confirmed by initial comments on it, are much more relevant than it seems, even for the supporters of the law itself. It enshrines in fact a principle that can be taken by the courts of each Member State, with problems of implementation and significant im-

plications, not only for Google. Search engines will have to rethink the way they manage links and the way they display the contents of sites that they index.

The judgement practically makes Google and other search engines responsible for the visibility of personal data published online, even if they have simply gathered it together for inclusion in their indexes and in their results. When receiving from individuals the request to remove the link to specific content deemed *no longer relevant*, they must do so, even if the sites that actually host those contents continue to keep it online. More simply, the Court ruled that, under certain circumstances, some content or personal data may not be linked on the search engines, even if these contents are entitled to exist. As the judgement is fairly generic, it follows that many aspects of Internet identity could fall under the extended definition of "no longer relevant": links to photographs of teens, offensive comments on social networks, malicious comments, judicial penalties already served, business documents on recruitments and so on.

Furthermore, according to the EU judgment, the evaluation of these aspects will be made by the same user who seeks "de-indexation" of those contents, and if the search engine does not consent, he may apply to a national court. Many people wonder if it will ever be possible to put into practice what has been decided by the European Court of Justice, and if all this will inevitably lead to an endless series of inquiries and complaints by individuals who want to make it impossible to find old bits and pieces of their personal identity that they would rather keep hidden.

There is a further aspect, not least, of an ethical nature. Search engines could be put in the position of deciding what is of public interest and still relevant and what is not. The Court ruled that in the event that there are "public figures" involved, the search engines have the power to oppose the removal request and to refer the case to the national court or to the competent national authority for the protection of privacy. But even in this case there

would still be an element of discretion: Google, or another search engine like Bing or Yahoo!, may decide to oppose some requests and not others, creating a *de facto* inequality of treatment. There are also implications regarding individual users. Making less accessible the “negative” information about the past of a person may raise a risk to those who have to interact with him. In fact, already in real life, we sometimes regulate our choices and decisions on the basis of information we have about other people. For example, should information about a conviction for violence be hidden or made accessible to those who have subsequent dealings with the convicted person?

In the coming months Google and the other search engines will have to find ways and means to address legal requirements similar to those that led to the judgment of the European Court of Justice. They will have to face the decisions of national courts which will act on the basis of the EU judgment, in a first implementation phase that promises to be very complex and hotly debated.

### **3.2 The International Context**

Despite the enthusiasm of some European exponents, who have long recognized the need to regulate the right to be forgotten, among the observers and legal experts of communication rights there is considerable concern about the possible consequences of the judgment of the Court of justice of the European Union on the removal of links and the likely complications of its implementation.

The UK’s data privacy watchdog has said that it would focus on “evidence of damage and distress to individuals” when reviewing complaints about Google and others’ search results. The Information Commissioner’s Office blog post (ICO) is the first official response to the EU ruling (Smith, 2014). The ICO will be responsible for resolving complaints in cases where a search engine refuses to remove links, but the body’s director of data

protection affirmed that ICO will not be ruling on any complaints until the search providers have had a reasonable time to put their systems in place and start considering requests.

As for Spain, it should be noted that already in 2011 the Spanish Data Protection Agency (*Agencia Española de Protección de Datos*) ordered Google to delete links on its search engine to any website containing out of date or inaccurate information about individuals and, thus, breaching their “right to be forgotten. As a consequence, Google challenged the AEPD’s order in a Madrid Court, since, in Google’s opinion, only publishers, and not search engines (which act as intermediaries), may be deemed responsible for contents published through their websites and on the Internet. Thus, only publishers should be forced to take action in order to guarantee users’ privacy and, especially, their “right to be forgotten”. Already at that time, this decision contributed to raising new questions on the balance between the right to be forgotten, on the one hand, and the freedom of speech and information on the other

In Brazil, on April 22 2014 the *Marco Civil*, the “charter of Internet,” was finally approved by the Brazilian Senate as a law governing the rights and obligations of users of the network. After five years of work there was approval in São Paulo of the law that protects privacy, freedom of expression and ensures net neutrality. On the specific topic of the right to be forgotten the *Marco Civil* contains provisions against the attribution of liability to intermediaries. This states that providers are not responsible for the content posted online by users, an issue which has been debated for years in Europe, which Brazil had not yet legislated for. According to the new Brazilian legislation in fact, the service providers will be liable for the contents of third parties only if they do not remove the data pursuant to a court order.

In Italy, the principle of the right to be forgotten is dealt with by the DPA (Data Protection Authority). The Data Protection Commissioner, in 2005,

attempted to identify a technical solution to ensure transparency regarding this issue and to avoid the creation, by means of search engines, of outright *electronic pillory*. The Ombudsman for privacy had examined an Italian case, in which a subject was sanctioned by a public body. On its website, the public institution had indicated the violation and the name of the violator. Consequently, the interested party had requested the removal of his name, claiming the right to privacy. The Ombudsman for privacy stated that the institution can continue to disclose on its website the legal decisions regarding the interested party and his company, but - after a reasonable period of time - the institution should relocate the legal decisions, dating to several years before, in a webpage of the site accessible only by means of the web address.

However, this page must be excluded from direct access by means of a common search engine. In practice, this case represented the recognition of the right to be forgotten and the prevalence of privacy legislation over the freedom of the press. Therefore, the court granted the claimant's claim, condemning the institution to pay damages, claiming that the news should have been cancelled because the persistence of the processing of personal data of the restaurant's owners and the name of the company, states the court, resulted both in infringement of the right to privacy and in a reputation damaged by systematic diffusion of the personal data.

In practice, the right to be forgotten existed in Italy before the judgment of the European Court of Justice on May 2014, which was extended to the Google search engine. In fact, already in 2012 the Italian Supreme Court had added an important contribution to the recognition of the right to be forgotten by stating that the information existing in the historical archives of online newspapers are to be considered *partial* since it does not report further developments of the facts, and therefore must be updated. The Court, in its judgment no. 5525/2012, imposed an obligation for publishers to

update the online archives of the news published. Online newspapers have to provide their archives with a system designed to indicate (in the body or in the margin of the web page) the existence of a follow-up or development of the news, thus allowing quick and easy access by users for the purposes of going into more detail regarding the specific news item. This Court decision assigns a new value to the right to be forgotten within the context of the freedom of the press. It enshrines the principle according to which the public interest in the knowledge of a fact is contained in the space of time necessary to inform the community, whilst, as time goes by, it fades until it disappears. In practice, with the passage of time, the fact ceases to be news and it reassumes its original nature as a private matter (Di Ciommo, 2012, pp. 703-715.). Finally, in the United States, the concept of the right to be forgotten is alien to the American legal system and to the policies of major American companies. It is in fact a European law, originally, French and Italian, which is not applicable in the United States. According to some American exponents, the judgment of the EU Court is deemed to be short-sighted, because it gives merely a snapshot of the present situation. At present, in fact, doing a search online is basically equivalent to using only one search engine, Google, which owns about 90 percent of the European market (Lance, 2015). Preventing Google from linking a "no longer relevant" specific content may make sense, because it makes it practically impossible to find that content. But in a more open market what would happen? If in the future there are more competitors who want to remove certain links from the pages of results, says Meyer, will they have to submit a request to each search engine? And what will happen if in the future there appears a search engine that works in a distributed way, and not in a centralized manner, as Google does today? Who will become accountable as point of reference? Should there be a reference point for each country in which there is a search engine? The

result is that, according to the case judged by the Court - if we try to find on Google the name of the person who made an appeal to the Court, we will not find that name listed, but if we look for it on the newspaper website then we will find it.

The judgement highlights wide-ranging and longstanding differences between how Europeans and Americans view fundamental values, including individual rights, privacy and the role of government and dominant telecom companies in information policy. Where Europeans see the “right to be forgotten,” many Americans see George Orwell’s memory hole. Where Europeans seem to have faith in the ability of regulators to protect the privacy of individual citizens, most Americans accept the fact that the Internet is an open door where anyone can enter and exit at anytime.

#### **4. CONCLUSION**

The reflections expressed so far become an important interpretation with reference to the centrality of the individual in an era of networks and also with regards to the concept of person, which is often underestimated. There is much debate on the mixture or blend between real and virtual universe, and here we are looking for questions and answers which are equally complex. A “journey in the virtual universe” leads to the formulation of questions that are centred not only on the network itself and for its own sake, but above all on the idea of person.

The Web knows very well that a great part of its fascination and attractiveness for end-users derives from its capacity to contain things *ad infinitum*, that is without limits of space and time, information and data of whatever kind (Schomberger, 2009). The person in the world of Internet is exposed to constant hazards in terms of his/her privacy and by using the social networks, jeopardizes his/her own private sphere. In fact, any piece of information uploaded to the Internet, escapes from the sphere

of exclusive availability of its owner, in that it can be memorized by other application servers and picked up by a range of search engines. By means of “cache copy”, many search engines operating on the Web make a copy of data available to users for each archived page, to be used when the original resource is no longer reachable. In this way search engines are carrying out, to all intents and purposes, an activity of memorization, aimed at making sure that the Internet forgets nothing.

As we have seen, the law has reawakened the debate on one of the most delicate themes of our time marked by global communication: that is the relationship between the so-called right to be forgotten on electronic communication networks and the freedom for anyone to use and access the Internet in order to freely express his or her identity. This is whether they are disabled or not. In this way, therefore, the right to protection of one’s identity on the Web and of the consequent right to be forgotten becomes in our view, one of the constitutional bastions of the new Society of global Information.

As pointed out by Stefano Rodotà (2014), who has persistently underlined the importance of the right to be forgotten for a number of years, affirmation of the right to be forgotten as a fundamental right of the person is an important element for what every Constitutional Charter defines as constitutional freedom of personality. Naturally, the issues regarding application have no easy practical solution. Firstly, we must ensure that this right does not become an instrument of censorship. An important area regards blogs or online journalistic information, the true raw nerve of the relation between two equally important freedoms, freedom of information and freedom of control over one’s own information. Secondly, there is the difficulty of practical application: once information enters the network its subsequent route is difficult to track.

Following the recent decision of the Court of Justice of the European Union, of which mention was made above, which ruled that users can ask

to search engines to remove results related to their name, Google has released a new tool for require the removal of the content. Google announces that the removal request may be made by any citizen believes that the information in the results associated with a search of his name may be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were published.

During the implementation of this decision, Google will assess each request and will try to balance the privacy rights of the person with the right of all to learn and distribute information. During the evaluation of the request Google will determine if the results include outdated information about the user and if the information is in the public interest, for example in case of financial fraud, professional negligence, criminal convictions or the conduct of public officials.

The search engine giant has also announced that it is working on the formation of a committee of experts who can provide advice on how to manage the new feature dedicated to the right to be forgotten.

Every revolution, as we well know, has its price. The history of human evolution, like that of peoples and nations, in this regard, has no exceptions, and consequently does not admit romantic illusions. The transition from one condition to another implies unfailing relinquishments and losses. Exactly what man must sacrifice is not clear yet. In the way of an example, it is clear how man in the universe of the Internet is exposed to all kinds of hazards as regards his privacy, and how, above all through the use of the social networks, he is jeopardizing and perhaps every day bartering his own private sphere. It is naive to imagine that we can exactly foresee the nature and extend of this phenomenon.

The pervasiveness of the Internet and social networks has given a new dimension to the relationship between freedom and market, as it has between democracy and rights. The spheres of economic, political and social pluralism are

witness to a constant growth, in the world of the Web, of new opportunities and also new risks. There exist new needs for the protection of rights and freedom and new rivalries constantly emerge in the exercising of rights that are disputed between innovation and protection. How can these processes be governed? How can they be faced in terms of rights and democracy? Can the world of the Web have rules, albeit mobile, which are without borders and in continuous mutation? Is there any need for a 'constitution' of Internet that gives new interdisciplinary answers and new policy orientations?

Without this awareness, which in philosophy has been referred to as "heterogenesis of currents", it is not possible today for the jurist to investigate with some hope of success the ways, the times and the locations of the Internet.

In this way, considering that the relationship between information and human memory has been deeply influenced by the diffusion of the Internet and in particular by Web search engines, it is necessary today to set out new equilibriums between protection of the right to inform (and be informed) and online protection of the personal identity of individuals. In this perspective, it would appear fair to have an obligation to integrate or update the piece of news that is no longer current, having it become a historical fact, but which is potentially damaging for the personal identity of the interested party, who has the right to the respect of their own personal and moral identity.

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## KEY TERMS AND DEFINITIONS

**Bill of Right:** literally means a bill on the rights, but the term has come to mean the use of the Declaration on the Rights.

**Digital Identity:** Digital identity is the data that uniquely describes a person or a thing and contains information about the subject's relationships. The social identity that an internet user establishes through digital identities in cyberspace is referred to as online identity.

**European Union:** The EU is an organization of supranational and intergovernmental, that from 1 July 2013 includes 28 member states independent and democratic.

**Google:** Google is an American company that offers online services, primarily known for the search engine Google, the Android operating system and a set of Web services like Gmail, Google Maps, YouTube.

**Marco Civil da Internet:** Marco Civil is the law that governs the use of the Internet in Brazil.

**Right to oblivion:** A concept that has been discussed and put into practice in the European Union (EU) and Argentina in recent years. The issue has arisen from the desires of some individuals to "determine the development of his life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past.

**Social Networks:** A social network is a social structure made up of a set of social actors (such as individuals or organizations) and a set of the dyadic ties between these actors.

**Virtual Word:** Virtual Word is a computer-based simulated environment. The term has become largely synonymous with interactive 3D virtual environments, where the users take the form of avatars visible to others.