

Rights To Be Forgotten.15.05.2018

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Legal framework of forgetting

Since the 25th of May a new, stricter “General Data Protection Regulation” comes into force in the European Union. More explicit consent and obtaining the agreement of people will be needed as a prerequisite to record or use their data in any for whatsoever – email, comments, browsing history, page views, click tracking, usernames, passwords, photos, videos, social security numbers, membership details, e-mail, messages etc. This includes any and all their activity on social media and their digital footprint in the widest possible sense.

If the internet started out as a hippie utopia enabled by the free traffic of information between communities effectively unregulated by state intervention, we have now reached a point where this Wild West approach is coming to an end. All actors involved understand that clearer rules and regulation have become necessary. While everybody possesses equal rights in principle, customers and individuals have seen their true agency diminish, as more and more choices are taken on their behalf under the subtle or not so subtle influence of others enabled by the tracking and

analysis of personal information by giant tech corporations. We are in an age of mass market all pervasive influence peddling that foreshadows an Orwellian future if left unchecked.

“Rights to be forgotten” – a catchy phrase encapsulating the struggle of people to have their private data removed from search engine results. The rights of individuals to seek erasure of certain data that concerns them, the initial skirmish in a proxy war to maintain and wrest back control of their personal data. While specific cases of forcing search engines to remove URL’s has seen the tech giants repeatedly push back and try to limit the options an individual has to alter search results specific to them – citing such action as an infringement on the freedom of speech on the internet, akin to censorship and limiting freedom of expression, or even rewriting history. Yet the rosy assumption that search queries faithfully represent the interest of the public by promoting and giving access to only the most important and relevant bits of information is beginning to look ever more naïve. The understandings and techniques behind search engine optimization and online marketing have been twisted into the deliberate and targeted flooding of internet spaces with fake news carrying message payloads specifically tailored to be receptive and influential to profiled and modeled users. This technique has created distortions of reality where people exist in bubbles that echo back populist, and factually incorrect but politically purposeful, ‘news stories’. Stories that supplant reality, becoming entrenched through consumption and repetition.

It seems obvious, that one has a right to demand removal of false, defamatory information, but there were always laws for that. Likewise, shouldn’t it also be your right to be able to remove embarrassing or private information, photos or videos, that have been published without your consent? The answer to the question why people *have* the right to remove, alter and manage information concerning them, in the European Union, is governed by the idea human dignity, during life and also after death. So, people want that other parties and web browsers and applications to stop collecting their info? They now have that right, but what is it they really

want? Basically, they want to say – forget about us, but is that a right really, is that not an infringement on another’s right to remember? If someone demanded of you, in person, that if you didn’t forget them you would be infringing on their human rights, wouldn’t you think that absurd?

The ruling of ‘deleting’ the data is also somewhat dubious. Some URLs can be made invisible in certain areas of the global internet. However, once something is published online, there is a simple no chance to stop others from copying it and publishing it elsewhere. In the the digital world once something is published forcing the total removal of it is hardly possible, without the apparatus of a globally repressive system.

Who is responsible for safety in digital world?

In the generally liberal politics of the US, up until recent times it was deemed that responsibility for online safety lies with the consumer; that people should care for themselves and maintain their own ‘digital hygiene’ – using tools such as antivirus software, and obeying behavioral norms such as not clicking on strange links, using strong and different passwords for each application, not sharing your personal data on the internet, and specifically choosing what info to share to applications.

However, the overall digital literacy of an average user is not sufficient to assess the full impact of their digital actions. And the recent scandal with the Facebook data leak via Cambridge Analytica, show that persons cannot guarantee their safety even when interacting with fully legal and respected tech companies, webpages or applications. It was termed a leak, but upon closer inspection the system was designed to afford this behaviour.

The EU’s attitude has been that responsibility should mainly be on the corporate world to ensure that customers understand the effect of their actions and do not disclose sensitive information unintentionally due to the use of insufficient or cryptic EULAs (End User License Agreements). The EULA – the agreement that few ever read before selecting the the

checkbox next to 'Terms and Conditions'. In doing so accepting 10 pages of text in small letters, that govern in the most important way your relationship with that organisation. Could you imagine people so dismissively signing any other legal agreement or contract?

Poetics of forgetting

Forgetting is an important theme in culture. Forgetting brings relief. Possibility that others forget you or certainly your actions – and in doing so diminish the burden you carry in your interactions with others. Lethe, the river of forgetfulness in Greek mythology, flowed through the cave of Hypnos, the god of sleep, where its murmuring would induce drowsiness. Where the shades of the dead were required to drink the waters in order to forget their earthly life and memories, and through that be reborn. No new beginning is likely without an erasure of the past. In other cultures there are beliefs about souls of people who cannot rest in peace after death, they wander restlessly because they have unfinished businesses. There is a saying – while people are remembered, they are not dead. Forgetting is the cure.

There is a natural rhythm to forgetting. Just think about your grandmother, an old woman dear to your heart. And yet we know very little about her mother – a person so important to her. Maybe we just have heard her name and some trivia. And what of your great grandmother or your great great grandmother – you most likely don't even know their names.

Fame and decline of artists

The politics of memory and remembrance have been reversed. Until recent times 'fifteen minutes of fame' on TV was something for which ordinary

people and artists alike craved. You had to get into the media to be noticed, to be born as a social persona. Nowadays, with the proliferation of new media, it is not enough to get on there. Anybody can have a youtube channel, and yet go unnoticed by the standards of mainstream media. With the proliferation of media channels and platforms it is possible to be alive and already non-existent. Yet a curious twist that in this environment some individuals fight for their right to be forgotten?

How long are artists remembered? A prolific debut now, a footnote in an art history book within two decades, forgotten altogether within 50 years. That is a regular yet quality artist, but how about let's say Rothko? He was well known, yet had to struggle with perceptions of his art, his unexpected fame, and inflated prices of his paintings late during his lifetime. More than anything, people want to be remembered in a way they want, or at the very least in a way they deem acceptable.

Some want to be remembered, some want to be forgotten. But what is the commonality?— they both want to have it *their* way. Attention control. Impression control. Art of impression. Sociologist Erving Goffman talks of 'presentation of self in everyday life'. All our appearances and interactions are carefully staged to communicate the right impression. Real life can be divided into separate theatres of action where we can choose to project different identities of our self – one person at work, different on the street, yet still different at home with family. And ultimately, we have a chance to step off the stage – into the 'backstage', when we are alone and don't have to pretend to be somebody and manage others perceptions.

Different digital personas

The new regulation, however, will protect only physical persons and their legal name. But what about virtual identities? What about my Twitter, Instagram, Facebook account? Can I claim damage done to my virtual identity? Can I claim several separate virtual identities and uphold my rights

to keep them separate? At the current moment virtual identities are seen as a property of a person but not entities by themselves.

Also, the new legal framework mostly addresses the need to protect just one of three kinds of actors active in digital world, all of whom hold quite similar *accounts* on social media – individual accounts, corporate accounts, and accounts of state institutions.

Individuals are entitled to privacy rights and the ‘right to be forgotten’.

Corporations must abide by regulations to provide accurate information about their product for consumers; however, massive advertising is still permitted to project unrealistic visions atop that. Damage done to a company’s reputation, if attributed to defamatory actions, can lead to legal action and to a demand to remove said defamatory information.

State institutions and state representatives have still another approach in the digital sphere. As representatives of a society, parliament members and politicians are under closer scrutiny from mass media, and an infringement into their private sphere is often justified by the needs and interests of the society for whose members they represent.

Digitally extended selves

The digital life has started as an extension of our physical and social selves. No wonder people treated it initially in a similar fashion – creating different personas of self to act in distinct areas. However, the development and sophistication of digital tools have brought us to the threshold where breadcrumbs left by us on different webpages, applications and social media profiles are pieced together and brought back to us as a massive, consolidated digital mirror image of ourselves. One that not only traces our digital behavior in a way incomprehensible to us, but also predicts our patterns of behavior with truly unsettling accuracy. We no longer have control over our fabricated selves. Somebody (search engines) has

assembled digital catalogues of us, accessible for everyone who writes our name and surname into Google Search bar.

Viewed one way, the prospects and potential consequences are terrifying. We should be horrified, shouldn't we? Dangers looming atop, we risk dismissing the profound changes digital media have already brought to us, ourselves, our daily habits, and ways we communicate with others. Changes in many ways that have emancipated people and enriched their daily experiences. Seen as an extension of our physical persona, digital tools already provide us tools for meaningful and diverse social communication with other denizens of the planet on a scale hitherto undreamed of.

People walking on streets immersed in their phones. Emotional AI, providing human-like emotional communication enabling robots to offer combined physical and emotional support similar to personal human interaction. Meaningful, deep, personalized communication with AI is only possible if humans share their views, preferences and likes. Such data collection is necessary for meaningful communication. Denying the personal information, is in effect saying – “AI, don't you even think of me”. Not communicating has never been the wisest strategy. However, what data to reveal and what to keep undisclosed – is not an easy topic. The advent of technology, as ever, outpaces good practice and regulation exactly because of the fact that we cannot predict the course of 'progress'. Regulation comes afterwards, and builds on flaws, setbacks and precedents.

The crucial difference, difficult to grasp for humans with their thousands of years long experience of human-to-human communication, is this – in the digital world **nothing is forgotten**. Everything you do leaves an accountable trace, liable to interpretation well beyond our limits of understanding. **Anything you 'say' can be used against you**. With technology getting subtler, reading face expressions, gestures, and frequencies emitted by our brain – beware of what you think, even thoughts are not fully private any more.