

## **My Test-Run Briefing Paper for *Operation Lethe***

DATE: September 6, 2021

TO: Representative Hewe (I-UDC)  
Hamish Ovechkin, Chief of Staff to Rep. Hewes

FROM: Matthew Hammond  
The SplT Takes

RE: Recommendation to Oppose the adoption of the right to be forgotten in the United States and related Talking Points

**Question:** Should the United States adopt the right to be forgotten available in the European Union?

**Short Answer:** No.

### **Background**

The right to be forgotten was established by the European Court of Justice in 2014. The court was reviewing a case against Google brought by a Spaniard for listing a result in response to his name that linked to a newspaper notice of his house being sold at a bankruptcy auction 10 years earlier (TEDx Talks, 2015). The court ruled for the Spaniard and found that European data protection law gives individuals the right to ask search engines to remove specific websites (or URLs) from search results provided in response to a query on a person's name (Google Search Central, 2022a; Google Legal Help, n.d.). The court established four criteria to be used to determine whether the specific webpages should be removed from the search results on a person's name. They are if the information is inaccurate, inadequate, irrelevant, or excessive, along with whether there is a public interest in the information remaining available (Google Search Central, 2022a). In 2018, The EU codified the right to be forgotten in its General Data Protection Regulation (GDPR) (Google Legal Help, n.d.).

The right to be forgotten applies to individuals and not to corporations. It does not apply to online content that the person is the author of because they can edit, delete, or change social media privacy settings so that it no longer appears in search results (Google Search Central, 2022a). In addition, social media sites have procedures to take down information.

### **How it works**

You can make a request to Google by providing the specific web address of the information (i.e., the URL), explain how it is related to you, and why it should be delisted (Google Legal Help; n.d.). Google will then review the request and make a decision, considering the public interest and your rights under the law. In considering the public interest, Google's reviewers consider important factors like the following:

- Your role in public life
- Where the information comes from
- How old the content is
- The effect on Google's users
- Truth or falsehood
- Sensitive data

(Google Legal Help, n.d.). Microsoft has a similar process (Corporate Social Responsibility, n.d.; Microsoft Bing, n.d.)

If Google agrees to delist the URL, it will not appear in search results on your name, but it does not erase the information from the actual website. You have to contact the website owner to get that done. And the URLs will only be delisted in the countries that apply European data protection law (Google Search Central,

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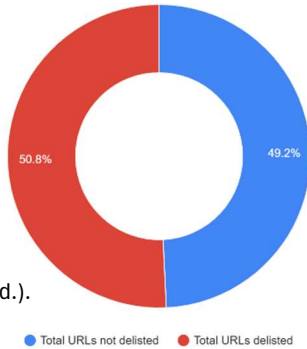
2022a; Bernstein, n.d.). As a result, in the United States the URLs would be returned for searches that would not return them in the European Union.

### Volume of Requests and De-Listings

Since 2014, Google has received 1,657,689 delisting requests related to 6,494,226 URLs (Google, n.d.). Google delists about half of the URLs it receives request about (Google, n.d.). During the same period,

Start 5/29/2014 End 10/7/2024

Microsoft has received, 70,086 requests related to 250,214 URLs, de-listing about half of them (Corporate Social Responsibility, n.d.).



(Google, n.d.).

Examples of information that Google has delisted include:

—After a politician has retired and left the public eye with no likelihood of return, information about past political results (Google Search Central, 2022b).

—A person's health condition, race, or sexual orientation, especially if requester did not consent to making the information public (Google Search Central, 2023).

—References to a prior conviction that has been expunged (Google Search Central, 2023).

Examples of information that Google has not delisted include:

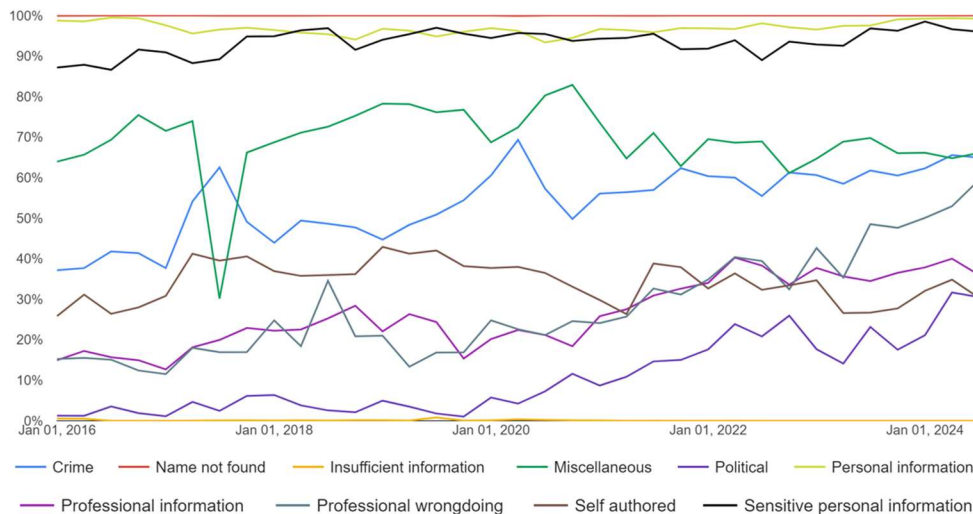
—A recent racist incident involving a person running for political office (Google Search Central, 2022b).

—Information about a recent bankruptcy of an existing business on a government website (Google Search Central, 2022b). (The government has already determined that there is a public interest.)

—Bad reviews of a doctor in city where she previously practiced (Google Search Central, 2023).

—Business owner convicted of embezzlement (Google Search Central, 2023).

The graph below shows how often Google delists a URL by the type of content (Google, n.d.):



(Google, n.d.)

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### Discussion

#### ***Should the United States adopt the right to be forgotten available in the European Union? — No.***

The right to be forgotten lies at the intersection of the competing values of individual privacy and an information provider's freedom of speech. In the United States, 74% of Americans support the right to have certain information removed from public online searches, but it varies by age and the type of information (Auxier, 2020).

Despite this public sentiment, the right to be forgotten should not be adopted in the United States. It would

- Violate the First Amendment.
  - The right to be forgotten narrows is a form of censorship (Gamboa, 2019)
  - Older state laws may have recognized a right to be forgotten, but in 1975, the U.S. Supreme Court found that a Georgia law allowing a lawsuit against a TV station for naming a deceased rape victim violated the First Amendment (Bernstein, n.d.).
- Imperil people's safety. Many requests are from people trying to hide past criminal or professional wrongdoing, which does not deserve privacy protection.
  - In 2019, a German court ordered the delisting of information about a man who was convicted of murdering two people and was sentenced to life in prison (Gamboa, 2019).
  - In Finland, Google was ordered to delist information about an individual imprisoned for 5 years for "diminished responsibility for murder" (Law Times, 2018).
  - In the U.K., Google was ordered to delist information about a businessman convicted of a hacking (Law Times, 2018).
- Break the internet and enable misinformation. Removing accurate information from search results only fuels the idea of fake news and threatens our democracy (Law Times, 2018; TEDx Talks, 2015).
- Imposes inappropriate burdens on search engines and gives them power they shouldn't have. Search engines should not be responsible for deciding what is in the public interest, especially considering that they have an incentive to agree to a delisting request to avoid litigation, which almost always follows (Law Times, 2018; TEDx Talks, 2015).

In addition, the right to be forgotten cannot be effectively implemented. People are creative and will get around any obstacles we erect. For example, China is fighting a losing battle to shield its people from Western influences over the internet (TEDx Talks, 2015). Google and Bing are driven by profit, like any other company, and if the burden gets to be too much, they will have the incentive to agree to more de-listings rather than subject themselves to more litigation (TEDx Talks, 2015).

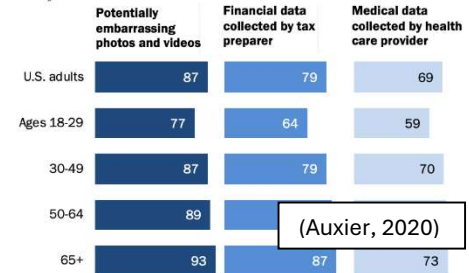
The opposing arguments below have appeal but are not worth the damage the right to be forgotten would do to our democracy. After each is a potential response to a question about the argument.

- Consumer's want the right to be forgotten. (Auxier, 2020).

*Response:* Of course, we all want a semblance of privacy. But at what cost? Limiting the *First Amendment* is too high a cost for me and our democracy.

#### **Americans differ by age over right to have personal info permanently deleted by those who have it**

% of U.S. adults, by age, who think that all Americans should have the right to have \_\_\_ permanently deleted by the people or organizations who have that information



Note: Those who did not give an answer are not shown.

Source: Survey conducted June 3-17, 2019.

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- We recommend that Rep. Hewes office review the correspondence from her constituents to better understand their views.
- Need to protect personal privacy. For example, legislators in New York have considered a law to require the removal of “inaccurate” and “irrelevant” statements from the internet (Bernstein, n.d.). And need to solve “the problem of digital eternity” (TEDx Talks, 2015).

*Response:* The New York law was not focused on accurate relevant information, but the right to be forgotten is used in Europe to suppress accurate information. There are other ways to deal with those problems. For example, we have a system to correct inaccurate information on credit reports.
- Need to protect vulnerable individuals. The internet makes it easier to exploit vulnerable individuals and the bar for defamation liability is too high to use to get information taken down (Bernstein, n.d.)

*Response:* We need to protect vulnerable individuals, but there are other tools beyond defamation to combat those issues. We have laws making fraud and abuse illegal that can be used.
- Companies are failing to do the right thing on their own. For example, companies have been criticized for being slow to remove abusive images involving children (Bernstein, n.d.).

*Response:* Again these are issues that need to be addressed, but the right to be forgotten is not the solution. Specific legislation to require companies to remove such material within a specific period of time with significant penalties would be much better.

  - Consider adding that you are working to draft such legislation.

### Recommendation

We recommend that Rep. Hewes oppose adopting the right to be forgotten. For the most part, the argument should start and end with the importance of free speech to protect our democracy. The *First Amendment* and its protections are founding principles of this country which we cannot lightly discard. And we are not better off having Google and Microsoft deciding what should be de-listed.

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