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THE BEST PRACTICE OF FORGETTING

ABSTRACT

Examining the ‘right to be forgotten’ in the European Union (EU) in the aftermath of the Google Spain v. AEPD and Mario Costeja Gonzalez decision, this Comment argues the need for a Centralized Data Protection Agency. In May of 2014, the Court of Justice of the European Union determined in Costeja that citizens of EU member states have the right to ask search engine companies to remove certain personal information from search results. Search engine companies, viewed by the court as ‘data controllers’, are required to consider the takedown requests in light of the individual’s privacy rights, but are not required to remove the requested information if the company determines that those privacy rights are outweighed by the public’s interest in the information. The European Commission later issued guidelines on the Costeja decision, adding the provision that if a request is rejected, the citizen may appeal to their local court or Data Protection Agency. This Comment argues that the lack of specific guidance in the Costeja decision ultimately created significant burdens on citizens, Internet search engine companies, and the EU member states. To mitigate these burdens, a Centralized Data Protection Agency, as this Comment envisions, would receive requests directly from citizens, weigh the privacy versus public interest rights, and make decisions that would be binding across all member states. The creation of an EU-wide organization would streamline the takedown request process by providing all citizens with a single authority to which they could submit requests. This solution would make the request process easier for citizens, relieve private search engine companies from the daunting responsibility of determining legal privacy rights, and insulate member states from conflicting local implementation.

INTRODUCTION

Most things are forgotten over time. Even the war itself, the life-and-death struggle people went through, is now like something from the distant past. We're so caught up in our everyday lives that events of the past, like ancient stars that have burned out, are no longer in orbit around our minds. There are just too many things we have to think about every day, too many new things we have to learn. New styles, new information, new technology, new terminology . . . But still, no matter how much time passes, no matter what takes place in the interim, there are some things we can never assign to oblivion, memories we can never rub away. They remain with us forever, like a touchstone.

—Haruki Murakami¹

In 2014, the “right to be forgotten” suddenly transformed from an amorphous concept set forth by the European Union (EU) in its series of privacy directives from 1995 into an operative pan-European law with the decision by the Court of Justice of the European Union to honor the request of Mario Costeja González, an ordinary individual with credit problems in his past, to have news articles pertaining to him omitted from Google’s search results.² In the aftermath of this decision, Google received hundreds of thousands of requests from citizens wishing to have information about them hidden.³ The requirements imposed on Internet intermediaries by the Court of Justice of the European Union in the *Google v. Costeja* opinion and subsequent guidelines issued by the European Commission have proven to be cumbersome for citizens wishing to exercise their ‘right to be forgotten,’ overwhelming for Internet intermediaries, and distressing for local governments. This paper critically examines these problems and suggests that a centralized data protection agency would provide solutions by creating a streamlined process for information removal requests.

On the first day of compliance with the *Costeja* opinion, Google received more than 12,000 takedown requests.⁴ In response to subsequent rejections of

¹ HARUKI MURAKAMI, *KAFKA ON THE SHORE* 98 (Alfred A. Knopf trans., Vintage Int’l 2006) (2002).

² See *Factsheet on the “Right to be Forgotten” Ruling (C-131/12)*, EUROPEAN COMMISSION, http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_en.pdf (last visited Jan. 10, 2015).

³ *Transparency Report*, GOOGLE, <http://www.google.com/transparencyreport/removals/europeprivacy/> (last visited Sept. 21, 2015).

⁴ Sam Schechner, *On Day 1 of European Take-Down Site, Google Hit by Wave of Requests*, WALL STREET J. L. BLOG (May 30, 2014, 3:13 PM), <http://blogs.wsj.com/digits/2014/05/30/on-day-1-of-european-take-down-site-google-hit-by-wave-of-requests/>.

requests for information to be removed from search results, citizens appealed the rejections in the courts of their home jurisdictions.⁵ Google itself has expressed concerns as to the scope of responsibility and challenges of implementing a coherent method to comply with the *Costeja* opinion.⁶ The European Commission has revealed that it expects Google and other search engines to implement takedown requests globally, not exclusive to search results within the EU.⁷ Some EU Member States have raised doubts and questions of their own in regards to the practicality and legitimacy of giving search engines the principal authority in the implementation of the new ‘right to be forgotten’ policy.⁸

This Comment reveals a disconnect between the EU’s promise of a ‘right to be forgotten’ and the execution of an effective method for implementing this revolutionary policy. It shows how the current implementation method undermines the ability of citizens to control access to personal information in a meaningful way. It then demonstrates how a centralized agency may be better qualified than individual Internet intermediaries to manage and minimize these problems, thus allowing citizens to more effectively exercise their right to privacy on the Internet.

I. THE COSTEJA DECISION AND IMPLEMENTATION

What should concern us is not that we can’t take what we read on the internet on trust—of course you can’t, it’s just people talking—but that we ever got into the dangerous habit of believing what we read

⁵ See Natasha Lomas, *Europe Seeks a Common Appeals Process for the ‘Right To Be Forgotten’*, TECHCRUNCH (Sept. 19, 2014), <http://techcrunch.com/2014/09/19/rtbf-appeals-guidelines/>; Press Release, Court of Justice of the European Union, Judgment in Joined Cases C-509/09 and C-161/10 (Oct. 25, 2011) [hereinafter Court of Justice Press Release] (concluding that “[v]ictims of infringements of personality rights by means of the internet may bring actions before the courts of the Member State in which they reside in respect of all of the damage caused”).

⁶ Letter from Peter Fleischer, Global Privacy Counsel, Google, to Isabelle Falque-Pierrotin, Chair, Article 29 Working Party (July 31, 2014) (on file with author).

⁷ Article 29 Data Protection Working Party, *Guidelines on the Implementation of the Court of Justice of the European Union Judgment on “Google Spain and Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González” C-131/12*, EUROPEAN COMMISSION, at 3 (adopted on Nov. 26, 2014), http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf [hereinafter *WP29 Guidelines*].

⁸ SUB-COMMITTEE ON HOME AFFAIRS, HEALTH & EDUCATION, REPORT, 2014-15, HL 40, ¶ 36 (UK) [hereinafter UK SUB-COMMITTEE REPORT]; Stephanie Bodoni, *EU Seeks to Curb Google Control of Right to be Forgotten*, BLOOMBERG NEWS (Oct. 10, 2014), <http://www.bloomberg.com/news/articles/2014-10-10/eu-seeks-to-curb-google-control-of-right-to-be-forgotten>.

in the newspapers or saw on the TV—a mistake that no one who has met an actual journalist would ever make.

—Douglas Adams⁹

What happens when old, irrelevant information on the Internet begins to affect your personal life? What is the remedy when a mistake in your past comes back to haunt you? This is exactly what happened to Mario Costeja González, a citizen of Spain.¹⁰ In 2009, a search for Mr. Costeja's name on Google, the world's leading search engine with a vast market-share,¹¹ returned Spanish newspaper articles from 1998 announcing that Mr. Costeja's home had been repossessed and would be auctioned off to satisfy tax debt he owed to the government.¹² Although these announcements were true and factual at the time of their publication, Mr. Costeja had paid off the debt long before 2009, and the ultimate purpose of the articles to attract bidders to the auction of his property was no longer relevant.¹³ In an era when searching for someone on the Internet is a frequently employed tool for vetting his or her integrity, Mr. Costeja sought to have the old and irrelevant information removed from the website to avoid any potential damage to his reputation in the future.¹⁴

A. Mario Costeja González's Complaint and Trials

During 1998, two separate notices appeared in a Catalan newspaper, *La Vanguardia*, announcing that Spanish national Mario Costeja González was a party to “a real-estate auction connected with attachment proceedings for the recovery of social security debts.”¹⁵ The notices later appeared on the newspaper's Internet website, accessible to persons in all parts of the world

⁹ *How to Stop Worrying and Learn to Love the Internet*, SUNDAY TIMES (Aug. 29, 1999), <http://www.douglasadams.com/dna/19990901-00-a.html>.

¹⁰ *See generally The Man Who Sued Google to be Forgotten*, NEWSWEEK (May 30, 2014, 2:13 PM), <http://www.newsweek.com/man-who-sued-google-be-forgotten-252854> [hereinafter *The Man Who Sued Google*].

¹¹ Danny Sullivan, *Google Still World's Most Popular Search Engine by Far, But Share of Unique Searchers Dips Slightly*, SEARCH ENGINE LAND (Feb. 11, 2013, 9:00 AM), <http://searchengineland.com/google-worlds-most-popular-search-engine-148089>.

¹² Charles Arthur, *Explaining the 'Right to be Forgotten'—The Newest Cultural Shibboleth*, GUARDIAN (May 14, 2014, 1:42 PM), <http://www.theguardian.com/technology/2014/may/14/explainer-right-to-be-forgotten-the-newest-cultural-shibboleth>.

¹³ *See id.*

¹⁴ *The Man Who Sued Google*, *supra* note 10.

¹⁵ Case C-131/12, *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*, 2014 EUR-Lex 62012CJ013, ¶ 14 (May 13, 2014), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012CJ0131&from=EN>.

with unrestricted Internet access.¹⁶ Mr. Costeja filed a complaint on March 5, 2010, with the Agencia Española de Protección de Datos (AEPD), requesting the information on La Vanguardia’s website to either be removed altogether or alternatively modified in a way that the websites containing the information about him would be hidden from the inquiries of Internet search engines because “the attachment proceedings concerning him had been fully resolved for a number of years and that reference to them was now entirely irrelevant.”¹⁷ He further asked for Google to directly exclude all links from its search results that referred to this particular personal information about himself, in addition to the specific links to those pages of La Vanguardia.¹⁸

The AEPD subsequently rejected the first part of Mr. Costeja’s request for the newspaper to either take down the information or alter the website to make it less visible to search engines because “the information in question was legally justified as it took place upon order of the Ministry of Labour and Social Affairs and was intended to give maximum publicity to the auction in order to secure as many bidders as possible.”¹⁹ Nevertheless, the AEPD upheld Mr. Costeja’s request for Google to omit all websites containing or linking to the information in dispute.²⁰ The AEPD found Google and other search engines to have a responsibility “as intermediaries in the information society” because they ultimately allow the information to be disseminated and located by the public.²¹ These activities were held by the AEPD to be subject to the “fundamental right to data protection and the dignity of persons” and therefore search engines should comply with the requests of individuals to make personal data unavailable via hiding certain search results from third parties.²² The AEPD further pointed out that one of the main differences between the availability of personal information on the newspaper’s website as opposed to the search engine’s results is that the “retention of the information on [La Vanguardia] is justified by a statutory provision.”²³

The Audiencia Nacional (National High Court of Spain) determined that individuals could request search engines to hide third party websites containing personal information if the requests fell within the context of the EU’s 1995

¹⁶ *See id.*

¹⁷ *Id.* ¶ 15.

¹⁸ *Id.*

¹⁹ *Id.* ¶ 16.

²⁰ *Id.* ¶¶ 2, 17.

²¹ *Id.*

²² *Id.*

²³ *Id.*

Data Protection Directive.²⁴ The Audiencia Nacional referred the case to the Court of Justice of the European Union to interpret and apply the 1995 Directive accordingly.²⁵

B. Ruling by the Court of Justice of the European Union

The Court of Justice of the European Union (the Court) first determined that under the 1995 Data Protection Directive Section 46 (Directive 95/46), Internet search engine providers such as Google are data ‘controllers’ of information and personal data.²⁶ As controllers, search engine operators are obligated to remove links to third party websites containing certain information that identifies an individual by name, even when the law protects the third party from having to remove the information being displayed on the hosted website.²⁷

The *Costeja* opinion lays out the broader rule that citizens of Member States may request to have personal information hidden by search engines as data controllers when the information is essentially superfluous:

[I]f it is found . . . that information appears, having regard to all the circumstances of the case, to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out by the operator of the search engine, the information and links concerned in the list of results must be erased.²⁸

This rule requires search engines as data controllers to examine each request and take into consideration “a balancing of the opposing rights and interests concerned”²⁹ to ensure that the right of the citizen is greater than the “interest of the general public in having . . . access to the information in question.”³⁰ In the event that the data controller ultimately rejects the request, the citizen then “may bring the matter before the supervisory authority or the judicial authority so that it carries out the necessary checks and orders the controller to take specific measures accordingly.”³¹

²⁴ *Id.* ¶ 19.

²⁵ *Id.* ¶ 20.

²⁶ *Id.* ¶¶ 33, 34, 41.

²⁷ *Id.* ¶ 62.

²⁸ *Id.* ¶ 94.

²⁹ *Id.* ¶ 74.

³⁰ *Id.* ¶ 100 n.4.

³¹ *Id.* ¶ 77.

C. Implementation of the Court's Holding

On the first day of compliance with the *Costeja* opinion, Google received more than 12,000 takedown requests.³² Co-founder of the search giant, Larry Page, expressed concern that this exertion of regulatory force from a government body on the Internet poses a serious threat to future Internet start-up companies,³³ and may also impede the free flow and collection of data that holds potential to be of benefit to society.³⁴ Despite the company's apprehensions and fear of the overarching effects of the *Costeja* opinion, Google nonetheless has taken proactive steps in complying with the Court's orders.³⁵ The company first rolled out a webform for citizens of the EU to submit their privacy requests, requiring at least one form of government issued identification.³⁶ Google also began an open and ongoing conversation with the EU about its particular concerns regarding the difficulties handling the volume of requests and performing the balancing test required by the Court.³⁷ In addition, Google assembled an eight member advisory council to lobby the EU for clearer guidelines for the post-*Costeja* 'Right to Be Forgotten' (RTBF) policy.³⁸

On November 26, 2014, the Article 29 Data Protection Working Party (WP29), on behalf of the European Commission, released guidelines for the implementation of the *Costeja* judgment.³⁹ These guidelines echoed the orders of the Court, requiring search engines as data controllers to accept RTBF takedown requests directly from citizens.⁴⁰ If a search engine denies an RTBF

³² Sam Schechner, *On Day 1 of European Take-Down Site, Google Hit by Wave of Requests*, WALL STREET J. L. BLOG (May 30, 2014, 3:13 PM), <http://blogs.wsj.com/digits/2014/05/30/on-day-1-of-european-take-down-site-google-hit-by-wave-of-requests/>.

³³ Richard Waters, *Google Bows to EU Privacy Ruling*, FIN. TIMES (May 30, 2014), <http://www.ft.com/intl/cms/s/2/b827b658-e708-11e3-88be-00144feabdc0.html#axzz3Hs7kMD9R> [hereinafter Waters, *Google Bows to EU Privacy Ruling*].

³⁴ Richard Waters, *Google's Larry Page Resists Secrecy But Accepts Privacy Concerns*, FIN. TIMES (May 30, 2014), <http://www.ft.com/intl/cms/s/0/f3b127ea-e708-11e3-88be-00144feabdc0.html> [hereinafter Waters, *Google's Larry Page*].

³⁵ Waters, *Google Bows to EU Privacy Ruling*, *supra* note 33.

³⁶ Natasha Lomas, *Google Offers Webform to Comply With Europe's 'Right to be Forgotten' Ruling*, TECHCRUNCH (May 30, 2014), <http://techcrunch.com/2014/05/30/right-to-be-forgotten-webform/> [hereinafter Lomas, *Google Offers Webform*].

³⁷ See Letter from Peter Fleischer, *supra* note 6.

³⁸ *Google Grapples With the Consequences of a Controversial Ruling on the Boundary Between Privacy and Free Speech*, ECONOMIST (Oct. 4, 2014), <http://www.economist.com/news/international/21621804-google-grapples-consequences-controversial-ruling-boundary-between>.

³⁹ *WP29 Guidelines*, *supra* note 7, at 7.

⁴⁰ *Id.*

request, the citizen may then seek remedy from either his or her local official Data Protection Agency (DPA) or local judicial system.⁴¹

Privacy experts as well as independent Member States have criticized this method of implementing the new RTBF policy because it gives companies, such as Google, the power to privately regulate speech and control access to information on the Internet at their own discretion.⁴² By mid-September of 2014, only four months after the *Costeja* ruling, at least 193 known appeals had been filed by citizens in their local courts to dispute denied requests by Google.⁴³ About a month later, Google revealed that it had received more than 144,000 individual requests for removal, and had subsequently granted approximately forty-two percent of the requests.⁴⁴ Overall, it appears that the EU is content to implement a revolutionary policy to protect the privacy interests of its citizens on the Internet, as long as it does not have to do the heavy lifting.⁴⁵

II. THREE KEY PROBLEMS CREATED BY THE CURRENT IMPLEMENTATION OF THE RTBF POLICY

The EU has taken a firm stand in recognizing the privacy rights of its citizens.⁴⁶ The new RTBF policy is a major step forward in ensuring the robust protection of those individual privacy rights.⁴⁷ While the road paved by the Court's *Costeja* opinion is bursting with good intentions, some inevitable complications have arisen along the way. First, the current method of implementation creates substantial obstacles and potential privacy vulnerability

⁴¹ Where a search engine refuses such a request, the data subject may bring the matter before the DPAs, or the relevant judicial authority, so that they carry out the necessary checks and take a decision in accordance with their power in national law. *Id.* at 12.

⁴² See generally UK SUB-COMMITTEE REPORT, *supra* note 8; *Index Blasts EU Court Ruling on "Right to be Forgotten"*, INDEX ON CENSORSHIP (May 13, 2014), <http://www.indexoncensorship.org/2014/05/index-blasts-eu-court-ruling-right-forgotten/>.

⁴³ See Lomas, *Google Offers Webform*, *supra* note 36; Court of Justice Press Release, *supra* note 5.

⁴⁴ Lance Whitney, *Google Hit By More Than 144,000 'Right to be Forgotten' Requests*, CNET (Oct. 10, 2014, 7:00 AM), <http://www.cnet.com/news/google-hit-by-more-than-144000-right-to-be-forgotten-requests/>.

⁴⁵ Craig Newman, *'A Right to be Forgotten' Will Cost Europe*, WASH. POST (May 26, 2014), http://www.washingtonpost.com/opinions/a-right-to-be-forgotten-will-cost-europe/2014/05/26/93bb0e8c-e131-11e3-9743-bb9b59cde7b9_story.html; Alan Travis & Charles Arthur, *EU Court Backs 'Right to be Forgotten': Google Must Amend Results on Request*, GUARDIAN (May 13, 2014, 9:06 AM), <http://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results>.

⁴⁶ See generally *Progress on EU Data Protection Reform Now Irreversible Following European Parliament Vote*, EUROPEAN COMMISSION (Mar. 12, 2014), http://europa.eu/rapid/press-release_MEMO-14-186_en.htm.

⁴⁷ See generally *id.*

for citizens who wish to exercise their nationally recognized right to privacy, even when they lack the fundamental access or knowledge required to make an RTBF request. Second, implementation burdens the Internet industry by requiring private companies to handle thousands of requests from citizens, asking the companies to make difficult and important decisions that could affect individual privacy, freedom of speech, and public access to information. Third, the implementation has created a strain on local jurisdictions from unsatisfied citizens who have had their RTBF requests rejected by search engines and continue to seek remedy, occasionally resulting in inconsistent results across Member States.

A. Undue Burden on Citizens: Cumbersome Requirements to Exercise Rights and Potential Privacy Risks

At the heart of the RTBF policy is intent to protect the privacy rights of all citizens of the EU by allowing them to control public dissemination of their private information.⁴⁸ However, the current implementation of the new RTBF policy poses multiple challenges for citizens: first, the general inability to make a request by any means other than through the Internet;⁴⁹ second, the necessity to place a unique request to each existing search engine or data controller⁵⁰ with the possibility that some data controllers will honor certain takedown requests that other data controllers may deny;⁵¹ third, the use of local jurisdictions as a final resort, where varying territories may reach differing conclusions;⁵² fourth, the private sector taking advantage of the new RTBF policy implementation by offering takedown request services to citizens that may pose significant risk for identity theft.⁵³

⁴⁸ Eric Savits, *The Right to be Forgotten: Protecting Digital Privacy*, FORBES (Aug. 2, 2012, 6:25 PM), <http://www.forbes.com/sites/ciocentral/2012/08/02/the-right-to-be-forgotten-protecting-digital-privacy/>.

⁴⁹ See, e.g., *Request to Block Bing Search Results in Europe*, BING, <https://www.bing.com/webmaster/tools/eu-privacy-request> (last visited Oct. 25, 2014) [hereinafter *Request to Block Bing Results*]; *Search Removal Request Under Data Protection Law in Europe*, GOOGLE, https://support.google.com/legal/contact/lr_eudpa?product=websearch (last visited Oct. 25, 2014) [hereinafter GOOGLE, *Search Removal Request*].

⁵⁰ UK SUB-COMMITTEE REPORT, *supra* note 8.

⁵¹ *Id.*

⁵² *WP29 Guidelines*, *supra* note 7, at 12.

⁵³ Cf. Mark Scott, *European Companies See Opportunity in the 'Right to be Forgotten'*, N.Y. TIMES (July 8, 2014), <http://www.nytimes.com/2014/07/09/technology/european-companies-see-opportunity-in-the-right-to-be-forgotten.html> [hereinafter Scott, *European Companies See Opportunity*]; Ian Burrell, *Google 'Right to be Forgotten' Ruling Enriches PR Companies Scrubbing the Web*, INDEPENDENT (Sept. 8, 2014), <http://www.independent.co.uk/life-style/gadgets-and-tech/news/google-right-to-be-forgotten-ruling-enriches-pr-companies-scrubbing-the-web-9719095.html>.

1. *Citizens Must Submit RTBF Takedown Requests Online*

The first problem facing citizens is that the RTBF takedown request forms are currently only available to submit online.⁵⁴ Although it may seem unimaginable in the highly developed countries of the EU, in 2012 the European Commission released a report revealing that twenty-four percent of the citizens of the EU had never used the Internet.⁵⁵ The report concluded that “[b]eyond lack of interest and of skills, equipment and access, costs are the main reasons declared by European households for not having access to the Internet.”⁵⁶ In the United Kingdom, seventy percent of individuals without access were found to voluntarily exclude themselves from the technology, expressing indifference towards ever using the Internet.⁵⁷ As of January 1, 2015, all major search engine companies accepting RTBF requests only accept takedown requests via the Internet.⁵⁸ Regardless of whether a citizen has never used the Internet for voluntary or involuntary reasons, is not a frequent user, or does not have access to the Internet at home, these factors do not preclude that individual from their privacy rights as they relate to the Internet. For example, a citizen who does not have the financial means to maintain Internet service in their home may still wish to file a request to have inaccurate or irrelevant information about them removed from search inquiries. This hypothetical citizen would need to obtain, at minimum, access to a computer with Internet access, an email address for the purpose of receiving communication about their request, and a method of scanning and uploading official documented proof of their citizenship.⁵⁹ The citizen would also need to periodically check the email account they associate with the request in order to respond to potential requirements for further information, and to be informed of the status

⁵⁴ *E.g.*, *Request to Block Bing Results*, *supra* note 49; GOOGLE, *Search Removal Request*, *supra* note 49.

⁵⁵ EUROPEAN COMM’N, DIGITAL AGENDA SCOREBOARD 2012, at 3 (2012), http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/scoreboard_life_online.pdf.

⁵⁶ *Id.* at 4.

⁵⁷ Chris Tryhorn, *Most People Without Internet Have No Interest In Getting Broadband*, GUARDIAN (June 10, 2009, 2:23 AM), <http://www.theguardian.com/media/2009/jun/10/ofcom-broadband-research>.

⁵⁸ *See generally* John Ribeiro, *Bing Follows Google in Offering Europeans the ‘Right to be Forgotten’*, PCWORLD (July 17, 2014, 8:36 AM), <http://www.peworld.com/article/2455240/microsofts-bing-follows-google-in-offering-europeans-the-right-to-be-forgotten.html>; *Request to Block Bing Results*, *supra* note 49; GOOGLE, *Search Removal Request*, *supra* note 49.

⁵⁹ “To prevent fraudulent removal requests from people impersonating others, trying to harm competitors, or improperly seeking to suppress legal information, we need to verify identity. Please attach a legible copy of a document that verifies your identity (or the identity of the person whom you are authorized to represent). A passport or other government-issued ID is not required.” GOOGLE, *Search Removal Request*, *supra* note 49.

and ultimate outcome of their request.⁶⁰ There are many hypothetical examples in which access to these resources may prove especially challenging: an elderly individual; a working single parent; an individual with disabilities that does not have convenient means of transportation or mobility; or an individual residing in a particularly secluded region. Although the European Parliament has emphasized the importance of free Internet access as a public resource to disadvantaged groups via the public library system,⁶¹ many Member States have increasingly cut funding to their public libraries, resulting in mass closures that further restrict access to this critical resource.⁶²

2. *Citizens Must Submit Unique Takedown Requests to Each Individual Data Controller*

Another problem is the necessity for citizens to file different requests for every unique search engine or data controller that exists either now or in the future.⁶³ This is especially burdensome when considering that there are hundreds of thousands of search engines in existence, and new search engines can appear overnight.⁶⁴ Even after successfully completing all relevant applications to request the removal of information, there remains the concern that each data controller may make contradicting decisions on the same request, resulting in the information being removed from some, but not all sources.⁶⁵ With this result, the only recourse left for the citizen would be to file a complaint within their local jurisdiction,⁶⁶ which raises a whole bundle of separate issues regarding accessibility to the court system and feasibility of bringing a successful suit.

⁶⁰ To place an RTBF takedown request, Google requests a “[c]ontact email address . . . where emails about your request will be sent.” *Id.*

⁶¹ *Written Declaration Recognising the Essential Social Role of Public Libraries*, EUROPEAN BUREAU LIBRARY INFO. & DOCUMENTATION ASS’NS (Oct. 18, 2013), <http://www.eblida.org/news/written-declaration-recognising-the-essential-social-role-of-public-libraries.html>.

⁶² *See, e.g.*, Alison Flood, *UK Lost More Than 200 Libraries in 2012*, *GUARDIAN* (Dec. 10, 2012, 8:46 AM), <http://www.theguardian.com/books/2012/dec/10/uk-lost-200-libraries-2012>.

⁶³ UK SUB-COMMITTEE REPORT, *supra* note 8.

⁶⁴ *See, e.g.*, Ronak Desai, Qi Yang, Zonghuan Wu, Weiyi Meng & Clement Yu, *Identifying Redundant Search Engines in a Very Large Scale Metasearch Engine Context*, Proceedings of the 8th Annual ACM International Workshop on Web Information and Data Management 51 (2006); Keir Thomas, *Three New Search Engines Worth Checking Out*, *PCWORLD* (Mar. 21, 2011, 2:47 PM), http://www.peworld.com/article/222727/google_alternatives_three_new_search_engines_worth_investigating.html.

⁶⁵ UK SUB-COMMITTEE REPORT, *supra* note 8.

⁶⁶ *WP29 Guidelines*, *supra* note 7, at 12.

3. *Citizens May Experience Conflicting Results in Local Jurisdictions*

Search engine companies are not the only players in the RTBF game who may not reach a mutual consensus. The third problem facing citizens is that the regional courts and DPAs within the Member States of the EU may differ in their individual assessments of RTBF requests on appeal. This issue of inconsistent implementation of policy among Member States “resulting in divergences in enforcement” was a major stumbling block for the EU’s 1995 Data Protection Directive,⁶⁷ and these past lessons of inconsistent policy implementation must be taken into consideration.

4. *Citizens May be Taken Advantage of by Private Companies, Creating Additional Privacy Risks*

The final issue that may lead to complications for citizens is the fact that business entrepreneurs have been eager to take advantage of the new RTBF policy, launching companies to specifically aid citizens in the process of submitting takedown requests.⁶⁸ The first known spawn of business models built on the concept of RTBF takedown services was Forget.me, a company that provides customers with assistance in completing the online request forms.⁶⁹

Two particularly problematic situations arise for citizens when third party actors get involved with the RTBF takedown request process. First, citizens who pay for the help of a third party service to facilitate a request have no guarantee that it will result in a successful takedown.⁷⁰ Regardless of this fact, companies will continue to take a customer’s money with little to no discretion as to whether or not the RTBF claim is actually viable.⁷¹

⁶⁷ *Commission Proposes a Comprehensive Reform of the Data Protection Rules*, EUROPEAN COMMISSION (Jan. 25, 2012), http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm.

⁶⁸ See Scott, *European Companies See Opportunity*, *supra* note 53; Carolina Baldwin, *EU Seeks Tech Startups to Address Challenges of Right to be Forgotten*, COMPUTERWEEKLY.COM (Sept. 9, 2014, 1:18 PM), <http://www.computerweekly.com/news/2240230263/EY-seeks-tech-startups-to-address-challenges-of-right-to-be-forgotten>.

⁶⁹ Amy Gesenhues, *The Inevitable Happened: First Company Provides “Right to be Forgotten” Removal Service*, SEARCH ENGINE LAND (June 25, 2014, 12:01 AM), <http://searchengineland.com/reputation-vip-online-management-firm-launches-site-assist-googles-forget-form-194998>.

⁷⁰ Scott, *European Companies See Opportunity*, *supra* note 53.

⁷¹ See *id.*; Ian Burrell, *Google ‘Right to be Forgotten’ Ruling Enriches PR Companies Scrubbing the Web*, INDEPENDENT (Sept. 8, 2014), <http://www.independent.co.uk/life-style/gadgets-and-tech/news/google-right-to-be-forgotten-ruling-enriches-pr-companies-scrubbing-the-web-9719095.html>.

Second, citizens open themselves up to identity theft when they reveal personal information to third parties.⁷² A study conducted by the European Commission in 2012 confirmed a direct link between Internet usage and an increased risk of identity theft.⁷³ It is possible for companies to fraudulently operate in this particular service industry as a front, with the actual motive of collecting citizen's private information such as their email address or other valuable identifying information from the official documentation they are required to provide for the request.⁷⁴ Even if this false-front organization does follow through with making the request, it could easily sell citizen's sensitive information that the company has collected in the process to another third party on the black market.⁷⁵

Other companies that operate legitimately in this service industry also pose a threat to citizens because of the necessity to collect sensitive personal information for the request creates a risk of the company's system being compromised or a corrupt employee surreptitiously stealing customer information.⁷⁶ Either way, allowing a third party actor to handle sensitive information, regardless of the actor's legitimate intent, creates another distinct threat to citizen's privacy beyond the scope of what the RTBF policy was designed to address. The goal of the RTBF policy is to empower citizens with the ability to control the dissemination of their personal information,⁷⁷ but the current method of implementation overall appears to give citizens more problems than power.

⁷² EUROPEAN COMM'N, STUDY FOR AN IMPACT ASSESSMENT ON A PROPOSAL FOR NEW LEGAL FRAMEWORK ON IDENTITY THEFT 5, 43 (Dec. 11, 2012), http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/cybercrime/docs/final_report_identity_theft_11_december_2012_en.pdf.

⁷³ *Id.*

⁷⁴ See Kelly Jackson Higgins, *Price Tag Rises for Stolen Identities Sold in the Underground*, DARK READING (Dec. 15, 2014, 3:35 PM), <http://www.darkreading.com/attacks-breaches/price-tag-rises-for-stolen-identities-sold-in-the-underground/d/d-id/1318165>.

⁷⁵ *Id.*

⁷⁶ *Computer Hacking and Identity Theft*, PRIVACY MATTERS, <http://www.privacymatters.com/identity-theft-information/identity-theft-computer-hacking.aspx> (last visited Feb. 13, 2015).

⁷⁷ "The right to be forgotten is about making sure that the people themselves—not algorithms—decide what information is available about them online when their name is entered in a search engine. It is about making sure that citizens are in control of their personal data." *Myth-Busting the Court of Justice of the EU and the "Right to be Forgotten"*, EUROPEAN COMMISSION, http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_rtbf_mythbusting_en.pdf (last visited Feb. 14, 2015).

B. *Undue Burden on the Internet Industry: Unwelcome Power and Lack of Resources*

Search engines have become a critical part of the way people use the Internet.⁷⁸ They are commonly used as the starting point for Internet browsers—in other words, it is the very first thing someone sees when they log onto the Internet. Google is often ranked by analytics trackers as the most visited website in the world.⁷⁹ Due to this overwhelming popularity of use by the general public, the Court decided that search engines should be accountable as gatekeepers, responsible for administering privacy rights on the Internet.⁸⁰ This position creates several problems: first, search engines prefer to hold themselves out as passive conduits of information, rather than active controllers;⁸¹ second, small Internet companies lack the same resources as their larger counterparts to effectively police content;⁸² third, the three-steps required for the RTBF takedown process are difficult for private companies to implement, even for giants such as Google.⁸³

1. *Search Engines as Passive Conduits v. Active Controllers*

By designating search engines as controllers of information rather than neutral intermediaries as they have held themselves out to be, the EU has put companies such as Google in a position of power that they do not desire.⁸⁴ Google's attitude towards its defined role on the Internet is that of a passive

⁷⁸ “The two means of access to web information most often used are search engines and links or recommendations from other websites.” Ruud Koopmans & Ann Zimmerman, *Visibility and Communication Networks on the Internet: The Role of Search Engines and Hyperlinks*, in *A EUROPEAN PUBLIC SPHERE: HOW MUCH OF IT DO WE HAVE AND HOW MUCH DO WE NEED* 220 (2007).

⁷⁹ E.g., *The Top 500 Sites on the Web*, ALEXA, <http://www.alexa.com/topsites> (last visited Jan. 11, 2014).

⁸⁰ Jo Best, *The Right to be Forgotten: Can We Really Trust Google to Decide When Our Data Should Die?*, ZDNET (June 5, 2014, 9:42 AM), <http://www.zdnet.com/article/the-right-to-be-forgotten-can-we-really-trust-google-to-decide-when-our-data-should-die/>.

⁸¹ See Jeffrey Toobin, *The Solace of Oblivion: In Europe, the Right to be Forgotten Trumps the Internet*, NEW YORKER (Sept. 29, 2014), <http://www.newyorker.com/magazine/2014/09/29/solace-oblivion>.

⁸² *Peers Say 'Right to be Forgotten' Principle Unreasonable*, BBC NEWS (July 29, 2014, 8:03 PM), <http://www.bbc.com/news/uk-politics-28551845>; Waters, *Google Bows to EU Privacy Ruling*, *supra* note 33.

⁸³ Sam Schechner & David Roman, *Google Seeks Views in Europe on Right to be Forgotten*, WALL STREET J. (Sept. 9, 2014), <http://online.wsj.com/articles/google-seeks-views-in-europe-on-right-to-be-forgotten-1410268827>.

⁸⁴ See Alan Travis & Charles Arthur, *EU Court Backs 'Right to be Forgotten': Google Must Amend Results on Request*, GUARDIAN (May 13, 2014, 9:06 AM), <http://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results>; Matthew Weaver, *Google 'Learning As We Go' in Row Over Right to be Forgotten*, GUARDIAN (July 4, 2014, 5:34 AM), <http://www.theguardian.com/technology/2014/jul/04/google-learning-right-to-be-forgotten>.

directory providing access to information, like a card catalog in a public library.⁸⁵ General Counsel Kent Walker points out: “We don’t create the information. We make it accessible. A decision like this, which makes us decide what goes inside the card catalogue, forces us into a role we don’t want.”⁸⁶ This passive stance may seem counterintuitive to features such as Google’s patented PageRank algorithm⁸⁷ that treats links like weighted votes to determine the specific order of websites that will be displayed in search results.⁸⁸ Despite factors such as the PageRank algorithm, search engines are treated as neutral intermediaries in the United States,⁸⁹ and are shielded from liability for third party content when they do not directly encourage or participate in the illegal activity of the third party directly.⁹⁰

Regardless of its passive posturing and resistance to being labeled as a data controller, Google immediately sought to comply with the *Costeja* ruling.⁹¹ David Price, one of Google’s in-house counsel members, commented “[a]fter the decision, we all made frowny faces, but then we got down to work.”⁹² Keeping in its tradition of being an advocate for transparency, Google has been open and candid about its process of implementing the new RTBF policy every step of the way.⁹³ The company assembled a comprehensive team of legal professionals to handle the massive influx of RTBF requests.⁹⁴ As of September 21, 2015, Google has received a total of 318,269 RTBF takedown requests and has evaluated 1,126,518 unique website addresses for removal.⁹⁵

⁸⁵ Toobin, *supra* note 81.

⁸⁶ *Id.*

⁸⁷ See generally U.S. Patent No. 6285999 B1 (filed Jan. 9, 1998).

⁸⁸ Danny Sullivan, *What is Google PageRank? A Guide for Searchers and Webmasters*, SEARCH ENGINE LAND (Apr. 26, 2007, 1:18 AM), <http://searchengineland.com/what-is-google-pagerank-a-guide-for-searchers-webmasters-11068>.

⁸⁹ See generally 47 U.S.C. § 230 (1996).

⁹⁰ See generally *Goddard v. Google*, 2008 WL 5245490, 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) (where the court found Google to be immune from illegal conduct of a third party under § 230(c)(1) of the Communications Decency Act because the search engine did not encourage or contribute to the illegal activity).

⁹¹ Peter Barron, Google’s Director of Communications for Europe, commented that “[t]he European court of justice ruling was not something that we wanted, but it is now the law in Europe, and we are obliged to comply with that law. We are aiming to deal with it as responsibly as possible. We have had more than 70,000 requests so far. It’s a very big process, it’s a learning process, we are listening to the feedback and we are working our way through that.” Weaver, *supra* note 84.

⁹² Toobin, *supra* note 81.

⁹³ Jess Hemerly, *Transparency and Accountability for the “Right to be Forgotten”*, GOOGLE EUR. BLOG (Oct. 10, 2014), <http://googlepolicyeurope.blogspot.fr/2014/10/transparency-and-accountability-for.html>; GOOGLE, *Transparency Report*, *supra* note 3.

⁹⁴ Toobin, *supra* note 81.

⁹⁵ GOOGLE, *Transparency Report*, *supra* note 3.

2. *Small Internet Companies Lack Resources to Effectively Police Content*

Google is fortunate in its ability to quickly and efficiently organize an extensive dedicated task force in response to the new RTBF policy. However, not all search engine companies have the same resources. Baroness Usha Prashar, Chair of the House of Lords Home Affairs EU Sub-Committee pointed out that the new RTBF policy “would put an unreasonable burden on small search engines, in terms of dealing with requests to remove information.”⁹⁶ Larry Page, co-founder of Google, weighed in on the onerous regulatory burden that the new RTBF policy imposes on startup companies in comparison to his own:

We’re a big company and we can respond to these kind of concerns and spend money on them and deal with them, it’s not a problem for us . . . But as a whole, as we regulate the Internet, I think we’re not going to see the kind of innovation we’ve seen.⁹⁷

Non-compliance with the new RTBF policy could result in companies facing “fines of up to 5% of their annual global turnover, or €100 million if greater.”⁹⁸ In order to manage the onslaught of RTBF requests on a case-by-case basis, each company would need to furnish a considerable compliance team.⁹⁹

3. *The Three-Step RTBF Process for Takedown Requests is Not Practical for Private Companies to Implement*

European Parliament Member and former EU Commissioner Viviane Reding surmised that Google should not have a problem implementing the new RTBF takedown request policy because it is a “small thing” compared to the millions of copyright takedown requests it fields every month.¹⁰⁰ Reding used

⁹⁶ Peers Say ‘Right to be Forgotten’ Principle Unreasonable, *supra* note 82.

⁹⁷ Waters, *Google Bows to EU Privacy Ruling*, *supra* note 33.

⁹⁸ *European Parliament Gives Overwhelming Back to New EU Data Protection Laws*, OUT-LAW.COM (Mar. 12, 2014), <http://www.out-law.com/en/articles/2014/march/european-parliament-gives-overwhelming-backing-to-new-eu-data-protection-laws/>; Proposal for a Regulation of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation) art. 79(2)(a), COM (2012) (Oct. 17, 2013), http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/comp_am_art_30-91/comp_am_art_30-91en.pdf.

⁹⁹ James Ball, ‘Right to be Forgotten’ Ruling Creates a Quagmire for Google et al, *GUARDIAN* (May 13, 2014, 11:00 AM), <http://www.theguardian.com/commentisfree/2014/may/13/right-to-be-forgotten-ruling-quagmire-google>.

¹⁰⁰ Alex Hern, *EU Commissioner: Right to be Forgotten is No Harder to Enforce Than Copyright*, *GUARDIAN* (June 4, 2014, 8:12 AM), <http://www.theguardian.com/technology/2014/jun/04/eu-commissioner-right-to-be-forgotten-enforce-copyright-google>.

these statistics to conveniently gloss over the fact that copyright ownership is much easier to prove than verifying and determining RTBF privacy rights.¹⁰¹

The process involved for a data controller to handle an RTBF takedown request requires a complex three-step process, versus the comparably simplistic one-step process required to handle a copyright takedown request.¹⁰² First, the data controller must verify the identity and citizenship status of the person asserting the request.¹⁰³ Google has revealed that it is a common occurrence for the company to receive “fraudulent removal requests from people impersonating others, trying to harm competitors, or improperly seeking to suppress legal information.”¹⁰⁴ The data controller’s ability to verify a requestor’s identity is limited by its lack of direct access to governmental records to compare the validity of documentation provided. Second, the data controller must determine whether the information at the heart of the request is adequate to be considered for removal.¹⁰⁵ To do so, the data controller must investigate the claims underlying the RTBF request to determine if the information is “inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing.”¹⁰⁶ Third, the privacy interest of the requestor must be balanced against the public’s interest in the availability of the information.¹⁰⁷ Verifying copyright ownership, in comparison, does not require any comparable balancing test that demands subjective discretion by the data controller. The only step a data controller must take in deciding whether or not to honor a copyright takedown request is to verify ownership of

¹⁰¹ See generally Carolyn E. Wright, *Two Easy Steps for Using the DMCA Takedown Notice to Battle Copyright Infringement*, NPPA, <https://nppa.org/page/5617> (last visited Jan. 25, 2015). “Takedown requests are easily made through a web form, and take an average of six hours for Google to process.” Ben Richmond, *Copyright Takedown Requests to Google Have Doubled Since Last Year*, MOTHERBOARD (Dec. 2, 2013, 1:05 PM), <http://motherboard.vice.com/blog/copyright-takedown-requests-to-google-have-doubled-since-last-year>.

¹⁰² Compare David Drummond, *We Need to Talk About the Right to be Forgotten*, GUARDIAN (July 10, 2014, 5:05 PM), <http://www.theguardian.com/commentisfree/2014/jul/10/right-to-be-forgotten-european-ruling-google-debate> (explaining the complex process and difficulties involved with processing each RTBF request, highlighting that there is no streamlined or easy way to go about the task), with *Creative Commons DMCA Notice & Takedown Procedure*, CREATIVE COMMONS, <http://creativecommons.org/dmca> (last visited Feb. 12, 2015) (showing one example of the relatively simplistic process of making DMCA takedown requests).

¹⁰³ Dave Lee, *Google Sets Up ‘Right to be Forgotten’ Form After EU Ruling*, BBC NEWS (May 30, 2014, 7:36 AM), <http://www.bbc.com/news/technology-27631001>.

¹⁰⁴ *Id.*

¹⁰⁵ Case C-131/12, *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*, 2014 EUR-Lex 62012CJ013, ¶ 14 (May 13, 2014), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012CJ0131&from=EN>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* ¶ 100 n.4.

the copyright in question. The task of verifying copyright ownership is significantly less daunting because most countries provide searchable online copyright databases.¹⁰⁸

Comparing RTBF privacy rights to the protection of copyrights is an error of false equivalence. Copyright law, unlike the RTBF policy, is deeply rooted in European statutory law, dating as far back as the 1710 Statute of Anne.¹⁰⁹ Its evolution alongside society is evident in subsequent statutes and international treaties implemented over the past three centuries.¹¹⁰ Google's compliance to copyright takedown requests is directly linked to several well-established international agreements put forth by the World Intellectual Property Organization (WIPO), dating back to the 1886 Berne Convention.¹¹¹ The agreements clearly spell out in detail the rights afforded to copyright owners to control the use and dissemination of their works.¹¹² These copyrights are absolute and only a few limited exceptions are carved out, such as fair use and fair dealings.¹¹³

In comparison, RTBF privacy rights are a relatively new concept and have not been as clearly enumerated. Nor is it easily determinable as to whether a particular RTBF claim is strong enough to warrant absolute control of the information by the individual asserting it. The EU has explicitly said that RTBF privacy rights are not absolute and therefore must be balanced against public interest and other fundamental rights, such as speech, on a case by case basis.¹¹⁴ It is grossly misleading to compare the task of verifying copyright ownership registration, which is regulated by international treaties and maintained by each country within designated governmental offices, with the task of balancing an individual's personal rights against the greater public's interest in access to information to determine whether an RTBF takedown request is justifiable.

¹⁰⁸ See generally *Directory of Intellectual Property Offices*, WIPO, <http://www.wipo.int/directory/en/urls.jsp> (last visited Dec. 20, 2014).

¹⁰⁹ 8 Ann. c. 19 (1710) (UK).

¹¹⁰ See generally *id.*; Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 828 U.N.T.S. 11850 [hereinafter Berne Convention]; WIPO Copyright Treaty, Dec. 20, 1996, S. Treaty Doc. 105-17 (establishing foundational principles in international copyright law).

¹¹¹ See generally Berne Convention, *supra* note 110.

¹¹² See *id.*; WIPO Copyright Treaty, *supra* note 110; WIPO Performances and Phonograms Treaty, Dec. 20, 1996, S. Treaty Doc. 105-17, 35 I.L.M. 76.

¹¹³ Berne Convention, *supra* note 110, art. 10.

¹¹⁴ See *Factsheet on the "Right to be Forgotten" Ruling*, *supra* note 2.

By making this false equivalence argument, the EU is not only over simplifying the responsibility it is imposing on the search engine industry, it is also attempting to dodge the bigger bullet of the *Costeja* ruling: the empowerment of private entities such as Google with the authority to act as judge and jury in the implementation of personal privacy rights on the Internet.¹¹⁵

C. Undue Burden on EU Member States: Strain on Local Jurisdictions and Inconsistent Results Abound

Policy implementation among several autonomous nations often results in stumbling blocks,¹¹⁶ and the attempt to coordinate the RTBF policy among the twenty-eight Member States of the EU is no exception. Member States are dealing with the clogging of their appeals courts and overburdening of their local Data Protection Agencies when search engines refuse to honor RTBF takedown requests;¹¹⁷ the guideline suggestions from the Data Protection Working Party mandate universal implementation of the RTBF on the internet;¹¹⁸ there is disagreement between Member States over the core principles and implementation of the new RTBF policy;¹¹⁹ and there are overall concerns of inconsistent decisions across different jurisdictions.¹²⁰

On November 26, 2014, the WP29 released guidelines for the implementation of the *Costeja* judgment.¹²¹ In these guidelines, the WP29 reinforced that search engines, as data controllers, would be required to handle

¹¹⁵ Julia Powles, *Google's Grand European Tour Aims to Map Out the Future of Data Ethics*, GUARDIAN (Sept. 10, 2014, 8:25 AM), <http://www.theguardian.com/technology/2014/sep/10/google-europe-explain-right-forgotten-eric-schmidt-article-29>.

¹¹⁶ See CHRISTOPHER HILL & MICHAEL SMITH, INTERNATIONAL RELATIONS AND THE EUROPEAN UNION 172 (2d ed. 2011).

¹¹⁷ WP29 Guidelines, *supra* note 7, at 12.

¹¹⁸ *Id.* at 3.

¹¹⁹ Compare Mark Scott, *French Official Campaigns to Make 'Right to be Forgotten' Global*, N.Y. TIMES (Dec. 3, 2014, 4:19 PM) [hereinafter Scott, *French Official Campaigns*], http://bits.blogs.nytimes.com/2014/12/03/french-official-campaigns-to-make-right-to-be-forgotten-global/?_r=0 (reporting that French officials support the new RTBF implementation policy), with Patrick Donahue & Cornelius Rahn, *Germany Mulls Arbitration for Web 'Right to be Forgotten'*, BLOOMBERG NEWS (May 27, 2014), <http://www.bloomberg.com/news/articles/2014-05-27/germany-mulls-arbitration-for-web-right-to-be-forgotten-> (reporting that German officials approach the new RTBF policy with caution), and UK SUB-COMMITTEE REPORT, *supra* note 8 (reporting that British officials oppose and reject many aspects of the new RTBF policy).

¹²⁰ *Data Protection Reform: Frequently Asked Questions*, EUROPEAN COMMISSION (Jan. 25, 2012), http://europa.eu/rapid/press-release_MEMO-12-41_en.htm?locale=en [hereinafter *Data Protection Reform: FAQ*].

¹²¹ WP29 Guidelines, *supra* note 7, at 7.

takedown requests from citizens directly.¹²² If a search engine rejects a citizen's request, either in part or in whole, the citizen may then appeal to either their local official Data Protection Agency (DPA), or alternatively to their local judicial system to verify whether the rejection is proper.¹²³ Currently, each EU Member State has a single local DPA, and these local DPAs are operated independently from one another.¹²⁴ Within only four months after the initial *Costeja* judgment, at least ninety such appeals were filed with local DPAs in various Member States.¹²⁵ At the six-month mark, 440 individual complaints involving Google's implementation of the new policy had been received by regulators in the United Kingdom, Germany and France.¹²⁶ The United Kingdom expressed concern in a report released by the House of Lords that this method of handling the takedown requests would put excessive strain on the country's local DPA.¹²⁷

The WP29 also instructed search engines to apply RTBF takedown requests across all "all relevant domains, including .com."¹²⁸ This would mean, for example, that if a French citizen makes a controversial RTBF takedown request that the French judicial system ultimately honors, Google would be required to remove the search results from not only Google.fr, but also Google.com (United States), Google.co.uk (United Kingdom), Google.de (Germany), and all other Google domains. Therefore, if search engines and other data controllers comply with this principle, the effects of an RTBF decision in one country's court system would have global enforcement throughout the Internet worldwide.

Google's Executive Chairman, Eric Schmidt, opined that the scope of the new RTBF policy applies exclusively to the jurisdiction of the Member States of the EU, and therefore removals should only affect Internet domain addresses that directly correspond to those territories, and not extend to domains that are default pages for other jurisdictions, such as Google.com, which is the default

¹²² *Id.*

¹²³ *Id.* at 12.

¹²⁴ *National Data Protection Authorities*, EUROPEAN COMMISSION (Feb. 12, 2015), http://ec.europa.eu/justice/data-protection/bodies/authorities/eu/index_en.htm.

¹²⁵ Julia Fioretti, *EU Regulators Agree on Guidelines for 'Right to be Forgotten' Complaints*, REUTERS (Sept. 18, 2014, 11:16 AM), <http://www.reuters.com/article/2014/09/18/us-google-eu-privacy-idUSKBN0HC26K20140918>.

¹²⁶ Sam Schechner & Frances Robinson, *EU Says Google Should Extend 'Right to be Forgotten' to '.com' Websites*, WALL STREET J. (Nov. 26, 2014, 10:59 AM), <http://www.wsj.com/articles/eu-says-google-should-extend-right-to-be-forgotten-to-com-websites-1417006254>.

¹²⁷ UK SUB-COMMITTEE REPORT, *supra* note 8, ¶ 38.

¹²⁸ *WP29 Guidelines*, *supra* note 7, at 3.

territory domain only for the United States.¹²⁹ Schmidt says this approach is justified because “[a] very small percentage—less than 5 per cent—of European traffic goes to .com so 95 per cent or more are to these sites.”¹³⁰ Peter Fleischer, Google’s Global Privacy Counsel, also emphasized that applying the RTBF decision universally would be problematic because “[o]ther courts in other parts of the world would never have reached the result that the European Court of Justice reached.”¹³¹

Member States do not even agree on how to implement the new RTBF policy, or whether it should be scrapped altogether and re-built from scratch.¹³² Isabelle Falque-Pierrotin, head of France’s DPA and Chairman of the WP29, staunchly supports implementation of the new policy in addition to expanding the ruling to include universal jurisdiction over all search engines.¹³³ Falque-Pierrotin believes that “[t]he location of the search user, not the search engine, is the most important [factor].”¹³⁴ In comparison, German officials have been more critical of the new policy and careful of its immediate implementation.¹³⁵ Within weeks of the initial *Costeja* ruling, the Interior Ministry of Berlin released an official statement that it was considering whether to establish special RTBF arbitration courts to aid in the process of deciding what information is suitable for removal from Internet search results.¹³⁶ The Ministry reasoned that unchecked power to hide information would be subject to abuse by “[p]oliticians, prominent figures and other persons who are reported about in public.”¹³⁷ This caveat could effectively provide these public figures with the means to “hide or even delete reports they find unpleasant,” further lamenting “that the removal of information shouldn’t be left to company algorithms.”¹³⁸

¹²⁹ Natasha Lomas, *Google’s Schmidt Stands Firm on Not Applying Europe’s Search De-Listing to Google.Com*, TECH CRUNCH (Oct. 16, 2014), <http://techcrunch.com/2014/10/16/google-advisory-council-london-meeting/>.

¹³⁰ *Id.*

¹³¹ Schechner & Robinson, *supra* note 126.

¹³² Compare Scott, *French Official Campaigns*, *supra* note 119, with Donahue & Rahn, *supra* note 119 (reporting that German officials approach the new RTBF policy with caution), and UK SUB-COMMITTEE REPORT, *supra* note 8 (reporting that British officials oppose and reject many aspects of the new RTBF policy).

¹³³ Scott, *French Official Campaigns*, *supra* note 119.

¹³⁴ *Id.*

¹³⁵ Donahue & Rahn, *supra* note 119; Matt Brian, *What You Need to Know About the ‘Right to be Forgotten’ On Google*, ENGADGET (June 2, 2014), <http://www.engadget.com/2014/06/02/right-to-be-forgotten-explainer/>.

¹³⁶ *Id.*

¹³⁷ Donahue & Rahn, *supra* note 119.

¹³⁸ Donahue & Rahn, *supra* note 119; Brian, *supra* note 135.

Of all of the EU's twenty-eight Member States, the United Kingdom has taken the most hostile stance against the new RTBF policy.¹³⁹ The House of Lords expressed that they do "not trust Google's judgment" and are "deeply uncomfortable" with the idea of "leaving such judgments to commercial enterprises."¹⁴⁰ The Sub-Committee concluded that:

[T]he Government does not support the right to be forgotten as it is currently proposed by the European Commission . . . We are very clear about that and we are going to argue the case both in terms of the wrongness of the principle—because we believe in freedom of information, and transmission of it—and the impracticality of the practice.¹⁴¹

In addition to disagreeing about the features and implementation of the new RTBF policy, Member States previously were unable to uniformly implement the 1995 Data Protection Directive that is at the core of the RTBF policy.¹⁴² A memo from the European Commission in 2012 reported that "differences in the way that each Member State implements the law have led to inconsistencies, which create complexity, legal uncertainty and administrative costs."¹⁴³ The European Commission proposed a "consistency mechanism" to help solve this problem.¹⁴⁴ Essentially, the consistency mechanism would be a centralized DPA to handle issues affecting multiple European jurisdictions, instead of asking local DPAs to make those decisions, which reflects the current RTBF implementation model.¹⁴⁵ However, two years after the proposal for a Centralized DPA, the European Commission has yet to create such an institution,¹⁴⁶ and the Commission's post-*Costeja* guidelines clearly instruct for universal application of privacy decisions to be determined first by private data controllers, and then by local DPAs or judicial systems.¹⁴⁷ This approach to

¹³⁹ See UK SUB-COMMITTEE REPORT, *supra* note 8.

¹⁴⁰ *Id.* ¶ 36.

¹⁴¹ *Id.* ¶ 53.

¹⁴² *Data Protection Reform: FAQ*, *supra* note 120.

¹⁴³ *Id.*

¹⁴⁴ *The Proposed General Data Protection Regulation: The Consistency Mechanism Explained*, EUROPEAN COMMISSION (Feb. 6, 2013), http://ec.europa.eu/justice/newsroom/data-protection/news/130206_en.htm.

¹⁴⁵ *Id.*

¹⁴⁶ "[M]ember states remain skeptical of a so-called one-stop-shop approach proposed by the DPR, which would enable citizens to complain to their local data protection authority in respect of a breach anywhere throughout the 28-state block." Jeremy Fleming, *EU Lawmaker Warns of Data Protection Rules Delay Till 2016*, EURACTIV (Jan. 8, 2015, 7:42 AM), <http://www.euractiv.com/sections/infosociety/eu-lawmaker-warns-data-protection-rules-delay-till-2016-311100>.

¹⁴⁷ *Cf. WP29 Guidelines*, *supra* note 7, at 12.

inconsistency in itself is paradoxically inconsistent, with the European Commission appearing to put the proverbial cart before the horse. The motive for this approach is unclear, and with the continuing accumulation of issues surrounding the new RTBF policy implementation, the strategy appears to be equally unwise.

III. PROPOSAL—A CENTRALIZED DPA AS IMPLEMENTATION SOLUTION FOR THE NEW RTBF POLICY

The WP29's guidelines for the new RTBF policy do not resolve the major problems that the current implementation of the policy creates for citizens, the Internet industry, and Member States. The solution proposed by the European Commission in 2012 to create a Centralized DPA is altogether ignored by the guidelines released by the WP29.¹⁴⁸ Most confusingly, although the European Parliament has shown recent hostility towards American Internet conglomerates such as Google,¹⁴⁹ the WP29 proposes to entrust these same companies with the power to handle the privacy rights of its citizens and conduct global censorship accordingly.¹⁵⁰

The current WP29 guidelines are not adequate to address the problems created by the new RTBF policy. However, a Centralized DPA as previously proposed by the European Commission could still be established, and would significantly aid citizens, the Internet industry, and Member States by implementing the new RTBF policy in a coherent and manageable fashion.

A. How Citizens Could Benefit from a Centralized DPA

As the EU holds the RTBF as an important and fundamental right that applies to all citizens, it stands to reason that the EU should take steps necessary to ensure that all citizens, not just those with the necessary resources, are provided with reasonable access to this right.

The first problem for citizens is that in order to make an RTBF request, they must do so online.¹⁵¹ A Centralized DPA could streamline a variety of options for citizens to make requests, such as via postal mail or telephone, in

¹⁴⁸ *Id.*

¹⁴⁹ James Kanter, *E.U. Parliament Passes Measure to Break Up Google in Symbolic Vote*, N.Y. TIMES (Nov. 27, 2014), http://www.nytimes.com/2014/11/28/business/international/google-european-union.html?_r=0.

¹⁵⁰ See generally *WP29 Guidelines*, *supra* note 7, at 7.

¹⁵¹ See *supra* Part III.A.

addition to forms on the Internet. A Centralized DPA could potentially have access to certain government records controlled by the EU as a whole. Therefore, a Centralized DPA may be able to verify identification of citizens via the telephone using specific forms of European-wide identification, such as the citizen's Taxpayer Identification Number¹⁵² or European Health Insurance Number.¹⁵³ With proper organization, a Centralized DPA should be able to meet the needs of citizens who are either disadvantaged or simply lack the technological ability to chase down data controllers online and submit direct requests to them via the Internet.

The current WP29 guidelines require citizens to submit unique requests directly to each individual data controller, such as Google or Bing, with no guarantee that all of the data controllers will reach a unified decision to honor the request.¹⁵⁴ If the citizen's request is denied by any of the data controllers, they must take further steps to appeal their claim to either their local DPA and/or their local court.¹⁵⁵ The RTBF process would be more efficient if a citizen could submit one request directly to a Centralized DPA, where a trained agent could analyze the information being requested for removal and apply the three-step process of (1) verifying the identity of the requestor, (2) deciding whether the information qualifies as the kind that may be considered for the RTBF policy, and finally (3) balancing the interests of the individual's right to privacy with the public's right to knowledge of the information. Only after all of these steps are applied to the citizen's particular request and deemed to be approved for removal, may the agent contact the data controllers and make a formal order for that information to be removed from the search results and/or servers. This would create uniform removals across all data controllers, and the question as to whether or not a data controller complies with the request under the law would be clear because it would be handling a request made directly by an agency of the EU. This method further removes the burden from the citizen of having to approach each and every data controller to request removal of the same information, eliminating the necessity for that citizen to repeat the same process multiple times over with the risk of varied results. In addition, the Centralized DPA could keep a record of its decisions on file so that if and when new data controllers appear in the future, a citizen would be able to ask

¹⁵² *Tax Identification Numbers*, EUROPEAN COMMISSION, http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/mutual_assistance/tin/index_en.htm (last visited Sept. 12, 2014).

¹⁵³ *European Health Insurance Card*, EUROPEAN COMMISSION, <http://ec.europa.eu/social/main.jsp?catId=559> (last visited Jan. 10, 2015).

¹⁵⁴ *WP29 Guidelines*, *supra* note 7, at 7.

¹⁵⁵ *Id.*

the Centralized DPA to send a copy of the takedown request to the new entities, therefore eliminating the hassle of having to go through the entire request process again.

Alternatively, a Centralized DPA could keep a secure database of all authorized takedown requests, organized in chronological order of decision date, and allow search engine compliance liaisons to access the information with the instruction to check the database regularly (with the option to receive automatic notification digests) and comply with the posted takedown requests accordingly. This method would streamline some of the process by shifting the burden of voluntary compliance onto the data controllers.

Another issue stems from the entrepreneurial community, eager to profit from the challenges facing citizens who want to make RTBF takedown requests.¹⁵⁶ Third party companies have already begun to coax citizens into revealing ample amounts of sensitive information by promising to take care of the tedious and difficult requirements of takedown requests.¹⁵⁷ This business model exposes citizens to a higher risk of identity theft, with no guarantee that the paid-for request placed by the third party company on their behalf will be successful.¹⁵⁸ A Centralized DPA would lower this risk because citizens would be communicating directly with a government agency. Even though government agencies are susceptible to hackers the same as any company connected to the Internet,¹⁵⁹ the risk of a citizen encountering a fraudulent third party company merely posing as a legitimate service with the underlying intention of stealing sensitive information would be eliminated. Further, if a Centralized DPA offered RTBF services for free or at the rate of a small processing fee, citizens would not have to deal with handing over money to a private company that does not guarantee results.

B. How the Internet Industry Could Benefit from a Centralized DPA

Google has made it clear that the company does not want to be treated as a data controller, nor does it want the responsibility of deciding difficult

¹⁵⁶ See Scott, *European Companies See Opportunity*, *supra* note 53.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Andrew Rettman, *Unknown Hackers Stealing EU Files for Past Five Years*, EUOBSERVER (Jan. 14, 2014, 6:49 PM), <https://euobserver.com/institutional/118729>.

conflicts between privacy rights and public interest.¹⁶⁰ Instead of requiring private Internet companies such as Google to decide RTBF takedown requests, a Centralized DPA could remove this burden by directly accepting and determining the requests. After the Centralized DPA analyzes and makes the ultimate decision as to whether the request should be approved, the DPA could then notify data controllers such as Google of that decision, and provide the companies with a direct order to remove the specific information from search results. This would not contradict the Court's decision that search engines are data controllers and have a responsibility to honor RTBF requests from citizens, but rather shift the burden of making difficult policy-shaping decisions from the hands of multiple private companies to one public agency.

Both Google and representatives from Member States point out that requiring private Internet companies to process and handle RTBF takedown requests directly creates a considerable burden for small startup companies that lack the abundant resources of giants such as Google or Microsoft to create comprehensive legal teams for handling a large volume of requests adequately.¹⁶¹ If a Centralized DPA were to solely handle the decision making process of RTBF takedown requests, then that burden would effectively be removed, and the companies would only need to furnish appropriate staff to comply with the approved removals.

The main concern for data controllers and the new RTBF policy is the complicated three-step process involved in determining whether an RTBF request should be honored.¹⁶² Google's Chief Legal Officer, David Drummond, published an opinion piece where he publicly stated that the company "disagree[s] with the ruling" in part because this process includes "very vague and subjective tests."¹⁶³ Both Google and Member States have voiced disapproval in the discretionary nature of the current policy implementation, allowing private corporate entities such as Google to make

¹⁶⁰ See Alan Travis & Charles Arthur, *EU Court Backs 'Right to be Forgotten': Google Must Amend Results on Request*, GUARDIAN (May 13, 2014, 9:06 AM), <http://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results>; see also Weaver, *supra* note 85.

¹⁶¹ *Peers Say 'Right to be Forgotten' Principle Unreasonable*, *supra* note 82; Waters, *Google Bows to EU Privacy Ruling*, *supra* note 33.

¹⁶² See Case C-131/12, *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*, 2014 EUR-Lex 62012CJ013, ¶ 14 (May 13, 2014), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012CJ0131&from=EN>; Lee, *supra* note 103.

¹⁶³ David Drummond, *We Need to Talk About the Right to be Forgotten*, GUARDIAN (July 10, 2014, 5:05 PM), <http://www.theguardian.com/commentisfree/2014/jul/10/right-to-be-forgotten-european-ruling-google-debate>.

impactful decisions on the privacy rights of private citizens and the greater public interest. A Centralized DPA could alleviate this anxiety for both the Internet companies as well as Member States by internalizing the RTBF three-step process, taking that responsibility out of the hands of Google and the like. In addition, a Centralized DPA would be better suited to access personal, sensitive information about citizens in order to verify their identities in a way that Google or any other private company would not and should not have privileged access to.

C. How Local Governments Could Benefit from a Centralized DPA

In 2012, the European Commission admitted that significant problems had arisen from Member States implementing the 1995 Data Protection Directive inconsistently.¹⁶⁴ Their report concluded that this problem “affects the trust and confidence of individuals and the competitiveness of the EU economy.”¹⁶⁵ Despite such a heady internal warning, the WP29, under the supervision of the European Commission, neglected to address this problem in its current RTBF implementation guidelines.¹⁶⁶ Instead, the guidelines instruct citizens to seek remedy in their local jurisdictions if their direct request to the data controller is denied.¹⁶⁷ This method has resulted in complaints from citizens piling up for both local DPAs and appeals courts.¹⁶⁸ As the European Commission originally proposed in 2012, a single data protection authority operating under a streamlined set of rules, such as a Centralized DPA, would combat this issue by creating a “‘one-stop-shop’ for data protection” that would:

[G]reatly simplify the way businesses and citizens interact with data protection laws and give incentives to trade and invest cross-border in the internal market, as opposed to the current situation where businesses are supervised by a different authority in each Member State they are established.¹⁶⁹

A Centralized DPA would remedy the problem of Member States reaching divergent decisions because the decisions would apply to all territories of the EU. It would be able to recruit representative agents from all twenty-eight

¹⁶⁴ *Data Protection Reform: FAQ*, *supra* note 120.

¹⁶⁵ *Id.*

¹⁶⁶ *See generally WP29 Guidelines*, *supra* note 7, at 7.

¹⁶⁷ *Id.* at 8.

¹⁶⁸ *See Schechner & Robinson*, *supra* note 126; Julia Fioretti, *EU Regulators Agree on Guidelines for ‘Right to be Forgotten’ Complaints*, REUTERS (Sept. 18, 2014, 11:16 AM), <http://www.reuters.com/article/2014/09/18/us-google-eu-privacy-idUSKBN0HC26K20140918>.

¹⁶⁹ *Data Protection Reform: FAQ*, *supra* note 120.

Member States who could work together to approve takedown requests, creating a more efficient method of removing information across country borders. Controversial topics, such as information regarding politicians, events or other individuals that would potentially have an impact across Member State lines if removed, could be debated in a single forum, rather than allowing a lone Member State to decide whether or not the removal request should be honored.

Although a Centralized DPA would not directly address the issue as to whether RTBF takedown orders should be implemented universally on the Internet to include domain names hosted outside of the EU,¹⁷⁰ it would be in a better position than Google or any other outside foreign entity to make takedown decisions that could be honored across all European domains.

Some Member States of the EU have been particularly vocal in their criticism of allowing corporate entities such as Google to shape public policy by having the first crack at approving RTBF takedown requests.¹⁷¹ Germany has pointed out that politicians and other prominent figures could use this to their advantage by manipulating information available to the public.¹⁷² A Centralized DPA could solve this by making RTBF takedown decisions before any official order would be passed down to the data controller, effectively eliminating the role of data controller as policy maker.

CONCLUSION: THE BEST PRACTICE OF “FORGETTING”

I'd always maintained that much of the anarchy and craziness of the early internet had a lot to do with the fact that governments just hadn't realised it was there . . . As we move more and more of what we do into that non-physical realm, it all becomes terribly important to the people who write the cheques.

—William Gibson¹⁷³

The Internet has become exceptionally valuable and important to society since it was introduced to the general public in the mid-1990s.¹⁷⁴ The

¹⁷⁰ Compare WP29 Guidelines, *supra* note 7 (ordering universal jurisdiction for RTBF takedowns), with Schechner & Robinson, *supra* note 126, at 3–4 (“Other courts in other parts of the world would never have reached the result that the European Court of Justice reached.”).

¹⁷¹ See UK SUB-COMMITTEE REPORT, *supra* note 8; see also Donahue & Rahn, *supra* note 119; Brian, *supra* note 135.

¹⁷² Brian, *supra* note 135.

¹⁷³ Steven Poole, *Tomorrow's Man*, GUARDIAN (May 3, 2003, 6:40 PM), <http://www.theguardian.com/books/2003/may/03/sciencefictionfantasyandhorror.williamgibson>.

percentage of the world's population using the Internet doubled from twenty percent in 2005 to forty percent in 2014.¹⁷⁵ It has become the main source in developed countries for news, entertainment, and communication. The more predominant the Internet becomes in society, however, the greater the need is to regulate it. Forward-thinking governments, such as the EU, understand the importance of protecting the fundamental rights and freedoms of its people in this new virtual landscape. The protection of citizens' fundamental rights to privacy is the backbone of the RTBF policy as well as the *Costeja* opinion. The problem is not with the principle of the policy, but with the way it has been put into practice.

The European Commission was on track in 2012 with the assessment that a "one-stop shop" would be the best consistency mechanism for ensuring uniform enforcement and observance of current and future privacy laws.¹⁷⁶ The exact reason why this method of implementation has yet to be explored post-*Costeja* is not clear, with some sources reporting that the search engine companies themselves have complained about the approach,¹⁷⁷ while others cite certain Member States for the resistance.¹⁷⁸ Regardless of who is to blame for blocking implementation of the idea, this Comment comprehensively outlines the numerous solutions a Centralized DPA would provide.

A Centralized DPA would not provide a magic bullet for the other remaining issues that stem from implementation of the RTBF policy. For example, a Centralized DPA would not solve the argument as to whether RTBF takedown orders should be honored universally on the Internet to include domain names hosted outside of the EU.¹⁷⁹ However, it could determine that the RTBF decisions be honored for all domain names hosted within the EU, and therefore a decision regarding any EU citizen should be binding on domain names hosted in all Member States.

¹⁷⁴ *Brief History of the Internet*, INTERNET SOCIETY, <http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet> (last visited Jan. 11, 2015).

¹⁷⁵ *The World in 2014*, INT'L TELECOMM. UNION (Apr. 2014), <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2014-e.pdf>.

¹⁷⁶ *Data Protection Reform: FAQ*, *supra* note 120.

¹⁷⁷ Jean De Ruyt & Sebastian F.A. Vos, *The EU Data Protection Regulation After 3 Years of Negotiation*, NAT'L L. R. (Jan. 6, 2015), <http://www.natlawreview.com/article/eu-data-protection-regulation-after-3-years-negotiation>.

¹⁷⁸ Jeremy Fleming, *EU Lawmaker Warns of Data Protection Rules Delay Till 2016*, EURACTIV (Jan. 8, 2015, 7:42 AM), <http://www.euractiv.com/sections/infosociety/eu-lawmaker-warns-data-protection-rules-delay-till-2016-311100>.

¹⁷⁹ *See supra* Part IV.C.

It would not be feasible to enforce RTBF takedown orders universally because of a significant difference in global ideologies on protected speech.¹⁸⁰ The United States is a prime example of a country that notoriously holds the constitutional right to freedom of speech as paramount to individual privacy rights.¹⁸¹ It is unlikely that the United States would allow censorship of any search engine's results, particularly because the courts have held that search results are fully protected by the First Amendment of the Constitution.¹⁸²

A significant caveat in attempting to make laws around technology is that technology is always changing,¹⁸³ and therefore it is difficult to create regulations fast enough to keep up with its constant evolution. The EU is making a valiant effort to protect its citizens in light of the way the Internet has impacted society, and a Centralized DPA appears to be the most sensible step forward in ensuring citizen's rights to privacy on the Internet.

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¹⁸⁰ See Lisa Fleisher, *Google Ruling: Freedom of Speech vs. the Right to Be Forgotten*, WALL STREET J. (May 13, 2014, 2:10 PM), http://blogs.wsj.com/digits/2014/05/13/eu-court-google-decision-freedom-of-speech-vs-right-to-be-forgotten/?mod=msn_money_ticker.

¹⁸¹ "The attempts by judges, legislators, and advocates to etch out some space for privacy concerns in light of the reverence for expression, explicitly granted in the Constitution, has been woefully unsuccessful." Meg Leta Ambrose, *It's About Time: Privacy, Information Life Cycles, and the Right to Be Forgotten*, 16 STAN. TECH. L. REV. 369, 376 (2013).

¹⁸² "Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect." *Zeran v. America Online*, 129 F.3d 327, 331 (4th Cir. 1997); EUGENE VOLOKH & DONALD M. FALK, FIRST AMENDMENT PROTECTION FOR SEARCH ENGINE SEARCH RESULTS 6 (Apr. 20, 2012), <http://www.volokh.com/wp-content/uploads/2012/05/SearchEngineFirstAmendment.pdf>.

¹⁸³ Moore's Law explains how the limits of electronic technology is exponentially endless, with the average rate of processing growth predicted to double every two years. See generally Gordon E. Moore, *Cramming More Components Onto Integrated Circuits*, 86 PROC. IEEE 82, 84 (1998).

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