

## Erasing Past Mistakes: The Right to Be Forgotten

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In today's world, past mistakes are only a click away. Social media has revolutionized our ability to connect with the world, streamlining marketing, networking, and enabling quick access to vast quantities of information. Although many see this as a positive, there may be some long-term drawbacks. Most notably, social media users are losing something through their engagement that is often overlooked—their ability to control what information is carried forward into the future.<sup>1</sup> Because of this, countries have implemented “the right to be forgotten”, or “the right to erasure”, which allows individuals to request the removal of specific personal information about themselves from online platforms.<sup>2</sup>

The right to be forgotten was established in May 2014 in the European Union following a ruling in *Google Spain SL and Google Inc. v. Española de Protección de Datos (AEPD) and Mario Costeja González*. The case centered around Mr. González's objection to Google search results displaying old newspaper articles connecting him to debt recovery proceedings in 1998.<sup>3</sup> This raised the question of whether search engines like Google should be held responsible for personal data appearing on web pages and whether individuals had the right to data protection. The Court found that European data protection law gives individuals the right to ask search engines to delist certain results related to a search of their name.<sup>4</sup> Later, in 2018 the EU adopted the General Data Protection Regulation (“GDPR”), which regulates how personal data is managed, gathered, and used.<sup>5</sup>

A central part of the GDPR is Art. 17 the "Right to Erasure" ('right to be forgotten'), which outlines the rights of individuals to have their data erased under certain circumstances.<sup>6</sup> Among those, the personal data must no longer be necessary in relation to the purposes for it was collected.<sup>7</sup> Several countries outside the EU have also enacted similar laws.<sup>8</sup> For example, in 2016 Russia signed the right into law, requiring that search engines targeting Russian consumers remove information that contradicts legislative requirements, is inaccurate, or accurate but no longer relevant.<sup>9</sup> With the increasing number of countries adopting these laws, the question is if or when the United States will implement a similar framework.

According to a survey conducted by the Pew Research Center in 2019, when given the option, 74 percent of U.S. adults said, "It is more important to be able to keep things about themselves from being searchable online."<sup>10</sup> However, 23 percent said it is more important to “discover potentially useful information about others.”<sup>11</sup> Americans' reluctance to adopt these laws may derive partially from norms created by the First Amendment, which upholds principles of free speech and public access to records.<sup>12</sup> However, the right to be forgotten carries numerous benefits that many citizens are looking to enjoy. While the U.S. has been reluctant to enact these laws thus far, the increasing integration of social media into daily life may lead legislators to consider adopting the EU's approach to protecting its citizens.

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<sup>1</sup> Sean Illing, *The end of forgetting*, VOX, <https://www.vox.com/the-highlight/2019/5/14/18510760/social-media-end-of-forgetting-kate-eichhorn>.

<sup>2</sup> Ben Wolford, *Everything you need to know about the “Right to be forgotten”*, GDPR, <https://gdpr.eu/right-to-be-forgotten/?cn-reloaded=1>.

<sup>3</sup> *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja González*, Case No. C-131/12, 14 (2014).

<sup>4</sup> *Right to be Forgotten Overview*, GOOGLE, <https://support.google.com/legal/answer/10769224?hl=en>.

<sup>5</sup> Ben Wolford, *What is GDPR, the EU's new data protection law?*, GDPR, <https://gdpr.eu/what-is-gdpr/>.

<sup>6</sup> General Data Protection Regulation (GDPR), Art 17. <https://gdpr.eu/article-17-right-to-be-forgotten/>.

<sup>7</sup> *Id.*

<sup>8</sup> Aaron Minc, *What is the Right to Be Forgotten?*, MINC LAW, <https://www.minclaw.com/right-to-be-forgotten/>.

<sup>9</sup> Irina Anyukhina, *‘Right to Be Forgotten’ in Russia Data Protection Law Has Passed All Stages of Approval*, THE NAT. LAW REVIEW, <https://www.natlawreview.com/article/right-to-be-forgotten-russian-data-protection-law-has-passed-all-stages-approval>.

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<sup>10</sup> Brookie Auxier, *Most Americans support the right to have some personal info removed from online searches*, PEW RESEARCH CENTER, <https://www.pewresearch.org/short-reads/2020/01/27/most-americans-support-right-to-have-some-personal-info-removed-from-online-searches/>.

<sup>11</sup> *Id.*

<sup>12</sup> David Reutter, *The Right to be Forgotten*, CRIMINAL LEGAL NEWS, <https://www.criminallegalnews.org/news/2022/jun/15/right-be-forgotten/>.