

The Right To Be Forgotten

Giovanni Maria Riccio
University of Salerno – Italy
gmriccio@e-lex.it - www.e-lex.it

- ✓ **The Existing Framework and the Proposed EU DP Regulation**
- ✓ **The Costeja Gonzales Case**
 - ✓ **RTBF v. Right to Be Indexed**
- ✓ **What Can Be Forgotten?**
 - ✓ **Criteria Used by Search Engines**
- ✓ **Google's Americanocentric Approach**

What's the RTBF?

DP Directive: Article 12 – Right of access:

Every data subject has the right to obtain from the controller as appropriate the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data

RTBF or Right to erasure?

Article 17 EU DP Regulation

A right to erasure where:

- a) the data are no longer necessary in relation to the purposes**
- b) the data subject withdraws consent on which the processing is based or when the storage period consented to has expired**
- c) the data subject objects to the processing of personal data**
- d) a court or regulatory authority based in the Union has ruled as final and absolute that the data concerned must be erased**
- e) the data has been unlawfully processed**

ECJ'S RULING



FACTS

- ✓ **1998: The Spanish newspaper La Vanguardia publishes two announcements concerning the forced sale of properties arising from social security debts**
 - ✓ **These announcements are then available on the webpage of the newspaper**
 - ✓ **Mr. Costeja Gonzales is named in one of this announcement**
- ✓ **2009: Mr. Costeja Gonzales contacts La Vanguardia asking for the removal of the referring to his name, which is indexed by the search engine Google**
 - ✓ **He also argues that the announcement is not relevant anymore as the sale has been concluded**
 - ✓ **The newspaper refuses to remove the content**
 - ✓ **The same request is then forwarded to Google Spain/Inc. which similarly refuse to remove**
 - ✓ **Costeja Gonzales lodges a complaint before the Spanish DPA**

**a) Territorial Scope of
the Directive No.**

95/46

**b) Does Google
processes personal
data?**

**c) Boundaries of the
RTBF**

Territorial Scope

- **Search engines activities are managed by Google Inc.**
- **Google Spain is a subsidiary of Google Inc., which sell advertising space in charge of Google Inc.**
- **For this reason, according to the ECJ, it meets the establishment requirement**
- **If so, it would be sufficient that an independent company sells advertining instead of Google Spain in order to avoid the application of the EU Directive**

Processing of Personal Data

- **The operator of a search engine is the 'controller' in respect of the data processing carried out by it since it is the operator that chooses the purposes and means of that processing**
- **Different opinion of the Working Group Article 29**
- **Does a technical and intermediary processing meets the definition of the EU directive?**

Which Criteria to be Used?

- **The RTBF cannot be granted, according to ECJ's ruling, "if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question"**
- **What's the public interest?**

At the moment, the determination of the public interest is left in the hands of the search engines, not of a public body

- ✓ **But what criteria search engines are using for removing links?**
- ✓ **Such criteria are not public at the moment**
- ✓ **Google has just published the number of requests and the percentage of accepted ones**

Three (Likely) Main Criteria

- ✓ Public Figures v. Non Public Figures
 - ✓ Time
- ✓ Mainstream v. Non Mainstream

[1]

**History is not
made only of
the epic deeds
of the “public
figures”**

**This is the legacy of
Herodotus of Halicarnassus**



HERODOTVS

te-tuis dant scriptis nomina Musæ: Tuque doces Musas dulcibus or-
Ex Bibliotheca Felutij Verini in marmore

« Ἡροδότου Ἁλικαρνησσεὸς ἱστορίας ἀπόδεξις ἦδε, ὡς
μήτε τὰ γενόμενα ἐξ ἀνθρώπων τῷ χρόνῳ ἐξίτηλα
γένηται, μήτε ἔργα μεγάλα τε καὶ θωμαστά, τὰ μὲν
Ἕλλησι, τὰ δὲ βαρβάροισι ἀποδεχθέντα, ἀκλεᾶ γένηται,
τὰ τε ἄλλα καὶ δι' ἣν αἰτίην ἐπολέμησαν ἀλλήλοισι »

« These are the researches of Herodotus of
Halicarnassus, which he publishes, in the hope of
thereby preserving from decay the remembrance of
what men have done, and of preventing the great and
wonderful actions of the Greeks and the Barbarians
from losing their due need of glory; and withal to put
on record what were their grounds of feud»

– Herodotus, The History, I, 1.

[2]

Today's news
will be
tomorrow's
history

The right to know of the public does
not "expire" like a bottle of milk



[3]

The risk of tearing up the index of names of the biggest book of the history of this century

The only one able to make, edit and undo the index of names is the author of the book as he only can judge the relevance and the importance of each name in the history.

Cervi, Tonino: 21, 22, 330,
Chattaway, Jay: 148.
Cherry Five: 20, 22, 57-60, 65, 88, 101, 223,
245, 265, 298, 310, 329, 330, 349.
Chetro & Co: 101.
Chiaramello, Giancarlo: 53, 54.
Chiari, Walter: 28, 31, 32.
Ciotti, Roberto: 73, 165, 323.
Cipriani, Stelvio: 24-25, 33, 66, 72, 87, 89, 109,
119-121, 140-142, 153, 161, 165, 166, 209, 214,
223, 224, 227, 229, 231, 288, 330, 335, 345.
Claudio Simonetti Band: 256, 296, 297.
Cocciantè, Riccardo: 52, 55, 71, 76-78, 95, 109,
126, 161, 164, 165, 166, 176, 186, 245, 303, 304,
313, 314, 332, 344, 346.
Coletta, Franco: 101, 102, 261, 263.
Connely, Jennifer: 188.
Continiello, Ubaldo: 158.
Corbucci, Bruno: 35, 126, 127, 131, 132, 228.
Cordio, Carlo Maria: 74, 158, 286.
Corky Corson and Buckboard: 163.
Corte dei Miracoli: 13.
Costanzo, Saverio: 256.
Coven: 80.
Cozzi, Luigi: 41, 68, 70, 149, 152, 156, 194, 201,
220.
Craabs: 270, 271.
Crazy Gang: 272, 273, 309, 322, 340.
Cream: 12, 261, 301, 317, 329.
Crispino, Armando: 69.
Cuomo, Alfredo: 111, 112, 138, 291.
Cupisti, Barbara: 197, 218, 222, 433.

D

Daemona: 33, 221, 235, 236, 244, 245, 246, 247,
248, 256, 277, 280, 286-289, 291-293, 296, 297,
298, 331, 338.
Daniele, Pino: 64, 71, 72, 164, 246, 303, 304,
305.
De Andrè, Fabrizio: 55, 56, 196.
De Angelis, Edoardo: 44, 126, 263, 303, 313.
De Angelis, Guido e Maurizio: 54, 55, 96, 125,
158, 177, 214.
De Laurentiis, Dino: 73.
De Laurentiis, Luigi e Aurelio: 134.
De Luca, Peppino: 52, 53.
De Masi, Francesco: 53.
De Piscopo, Tullio: 72, 162.
De Selle, Lorraine: 194, 195.
De Sica, Manuel: 69, 317, 343, 345.
Deep Purple: 12, 16, 40, 52, 267, 329, 331.
Definitive Gaze: 198, 199.
Delirium: 13, 53, 54.
Dell'Orso, Edda: 37, 66, 71, 159, 225.
Dell'Orso, Gianni e Giacomo: 156, 261.
Deodato, Ruggero: 159, 235, 275, 278, 281, 284,
340.
Detto, Mariano: 175, 182, 183.
Diefenthal, Gerard: 297.
Di Leo, Fernando: 56.
Dik Dik: 72.
Distaso, Nicola: 33, 262, 270, 271, 272, 286,
287, 317, 318, 321, 322, 323, 324, 331.
Donaggio, Pino: 149-150, 186, 210, 234, 314,
330, 348.
Donati, Aldo: 109, 127, 227, 335.
Doors: 11.
Douglas, Stan: 223.
Dream Bags: 20, 49, 66, 89.
Dubbed In English: 215, 234.
Duganova, Vesna: 239, 248.

E

Easy Going: 127, 133, 246, 268, 269, 270, 272,
321, 334.
Edgar Allan Poe: 75.
Eloy: 73.
Emerson, Keith: 16, 18, 89, 107, 147, 148, 159,
161, 165, 176, 196-201, 209, 212, 218, 221, 222,
248, 274, 285, 287, 298, 314, 317, 348.
Emerson, Lake and Palmer: 12, 13, 17, 18, 42,
58, 60, 65, 88, 147, 148, 159, 209, 268, 285, 329,
330, 343.
Equipe 84: 12, 54, 261.
Era di Acquario: 16, 47, 301.
Esposito, Tony: 33, 70, 71, 161, 166, 182, 314,
322.
Etna: 21, 44, 125, 133, 231, 302, 305.

F

Falsini, Franco: 75.
Farina, Dario: 44, 262, 303, 313.
Farina, Giorgio: 110, 235, 268, 333.
Fenech, Edwige: 29, 175, 341.
Fera, Fernando: 17, 133, 153, 181, 267, 269, 321,
329.
Ferrio, Gianni: 115, 132, 161.
Festa, Alberto: 215.
Fies, Elisabeth: 256.
Flea: 17, 21, 44, 125, 129, 262, 302, 305.
Flea On The Honey: 18, 21, 44, 47, 71, 125, 301,
304, 305.
Fons, Angelino: 27.
Formula Tre: 13, 54, 67, 146, 166.
Fraga, Kristian: 233.
Fragasso Claudio: 154, 155, 189.
Franciosa, Anthony: 177.
Francis, Mike: 126, 132, 161, 162, 186, 246, 252,
263, 304, 322, 324.
Frankie Goes To Hollywood: 187, 190, 191.
Frankie Hi-nrg MC: 225.
Franklin, Richard: 135, 137, 138.
Free Love: 53, 261, 268.
Friedkin, William: 47, 48, 186.
Frizzi, Fabio: 23, 24, 36, 37, 66, 71, 73, 157, 158,
161, 164, 165, 303, 314, 345, 348.
Fuiano, Claudio: 207, 210, 211, 213, 220, 239.
Fulci, Lucio: 28, 72, 100, 137, 149, 157, 158,
159, 201, 219, 227, 273, 274, 281, 286, 296.

G

Gaeta, Nicola: 162, 194.
Gardin, Roberto: 267, 321, 324, 329.
Gargamel: 215.
Garybaldi: 13, 262, 301, 302.
Gaslini, Giorgio: 38, 40-43, 45-50, 52, 58, 69,
79, 93, 119, 166, 209, 210, 211, 213, 214, 226,
231, 234, 247, 295, 324, 331.
Gasparri, Franco: 23, 65, 66.
Gemma, Giuliano: 177, 194, 195.
Gemser, Laura: 22, 23, 143.
Genesis: 12, 56, 59, 65, 66, 79, 115, 251, 285,
313, 343.
Gentle Giant: 12, 17, 43, 59, 65, 209, 313, 316,
329, 330, 343.
Giammarco, Maurizio: 161, 166, 167, 181, 185,
186, 194, 284, 303, 304, 314, 324.
Giombini, Marcello: 32.
Girolami, Marino: 29, 67, 96.
Glass, Philip: 93, 196, 197, 198, 199, 200, 274.
Gli Alisci: 54.
Goldray, Martin: 198, 199.
Gong: 91, 297.
Guarini, Maurizio: 50, 65, 75, 78, 81, 89, 117.

De-Indexation

The question of the de-indexation should not be addressed in terms of subjective qualities of the applicant: "public figure" or "NOT public figure". What matters are the "facts of interest to the public" against those that do not interest the public.

[follows]

- There are facts where the protagonists are "public figures" which do not involve the interest to the public and facts involving subjects which are "NOT public figures" but which involve the public interest.
- Someone can become a "public figure" for a "fact of interest to the public"

What is the best way to evaluate the content of a page when someone has requested that its URL be removed from search results?

- *Does the format of the content (image versus text, for example) matter?*
- *Is the content relevant to political discourse, citizen engagement, or democratic governance?*
- *Could the content have an impact on public or consumer safety?*
- *Is the content integral to preserving a historical public record?*
 - *Are there classes of historical records that must be preserved at the expense of any individual privacy claims, such as crimes against humanity?*
- *Could the content have an impact on scientific inquiry?*
- *Does the content document real events that are newsworthy?*

[Public Interest]

When a content is falls within the boundaries of the public interest?

[my opinion]

A content must be considered in the public interest if: - It is published in fulfillment of an obligation of the law and within the limits set by the law itself and of its purposes [it must be assumed that the law only requires the publication of personal data relating to facts of public interest] - The fact is likely to affect the society by influencing the political, economic (industrial and consumer), cultural choices of the members of one or more communities [it must be assumed that the personal data are published as exercise of freedom of the press, or at least for informational purposes - not only by editors and journalists - and are of public interest. Otherwise their publication would be unlawful ab origine]

Time

Is there a time at which information becomes irrelevant to any public interest?



Calendar does not help

Public interestest cannot be based on time

[my opinion]

The most useful references are those that involve the eventual exhaustion of the purpose of the publication, the absence of a new justification for the disclosure, and the evolution in the reputation of the person to whom the personal data belong

[follows]

- 1) When the purpose for which the information was published can be considered achieved. [This applies to many categories of content published in fulfillment of a legal obligation]
- 2) When a fact is no longer "news" and is not eligible to become "history" or when the purpose of the publication can be considered achieved [This applies to content published for information purposes. The question which remains open is: when is it possible that a news becomes history?]
- 3) When personal data published do not reflect the image of the person they refer to in the present historical situation and can not be updated [This applies to events - such as judicial - which are still in progress]

What procedural elements would create the ideal implementation of a right to be forgotten?

What if any involvement should publishers have in right to be forgotten requests? Should they receive notice, and if so of what sort?

Mainstream v. NonMainstream

The de-indexation has a significant impact on the exercise of the freedom of speech of the author of the content - no matters if he is a publisher, a blogger or a user of a UGC - and, in case of publishers, on their business activities. None, however, could claim a right to indexing his content and, therefore, dispute an "unjustified de-indexation"

[follows]

The author of the content or the person who published it must be informed of the request of de-indexation and should be placed in a position to defend itself in relation to the existence of reasons in support of the indexation or, otherwise, to adhere to the request made by the user.

To ensure the right to defense, personal data assumed to be “de-indexated” should be communicated to the one who published the content.

Thank You

