

FORTUNE

The Right to Be Forgotten from Google? Forget It, Says U.S. Crowd

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A debate over whether or not Americans should be able to shield their past misdeeds from future web searches.

The University of Oklahoma expelled two fraternity members this week after video of them leading a racist chant went viral. Now, a Google search of the young men's names shows the incident right at the top of the results.

But should this still be the case in 30 years? Should future employers and girlfriends be able to use Google ([GOOG](#) -1.47%) to easily discover the video? Or would it be better for the U.S. to create a law to allow such men, one day in the future, to cloak their youthful misdeeds?

On Wednesday night at the Kaufman Center in New York City, the Oklahoma frat brothers were discussed as part of a larger debate over whether it's time for the U.S. to adopt a "right to be forgotten" law to help people hide their past.

Right to forget

The so-called "right to be forgotten" soared into public view [last year](#) when the European Court of Justice, in a thunderbolt decision, ordered Google to grant a Spanish man's request to delete search results that linked to 1998 news stories about the man's unpaid debts.

The decision opened the floodgates for others in Europe to demand that Google take similar measures, and delete links that were, in the court's words, "irrelevant" or "inadequate." In recent months, thousands of people have done just that, asking Google to remove search results about everything from minor embarrassments to major crimes.

For now, there's no right to make similar requests in the U.S. But, according to European Commission official Paul Nemitz, it's high time there was.

"More and more data will be collected about you in the Internet age," Nemitz told an audience who had come to hear him argue, along with law professor Eric Posner, in favor of a proposal for the U.S. to follow Europe's example. On the other side were Digg CEO Andrew McLaughlin and Harvard Law School professor Jonathan Zittrain.

In the view of Nemitz and Posner, a new legal right is necessary to help people reclaim privacy that disappeared in recent years as a result of the Internet. After all, embarrassing information that once existed only as neighborhood gossip now follows people everywhere they go for many years.

They also argued that the right to be forgotten already exists in the U.S. in some forms, pointing to examples like invasion of privacy torts and credit reporting rules.

Nemitz also took care to point out that Europe's new "right to be forgotten" does not allow people to delete original information from the Internet. Instead, it lets them ask Google and other search engines to remove links, which makes the underlying information harder to find. And, of course, not all requests are granted – in the case of public figures, especially, the search links usually remain up.

The audience of hundreds applauded the pair's positions and, at the outset of the event, appeared in favor of the U.S. adopting a right to be forgotten law. But by the end of the evening, many changed their mind.

Reasons to remember

The flip side of Europe's new law is that it could suppress collective memory, and force people to forget information that is true. The right to purge Google, in this sense, is no more than a new form of censorship that provides encouragement to dictators everywhere.

Digg CEO McLaughlin, who also is a lawyer and former director of public policy at Google, blasted the European court's "irrelevant" and "inadequate" standards as hopelessly vague and ripe for abuse.

"It favors well connected elites in Europe," McLaughlin said, citing George Orwell's adage that he who controls the past controls the future.

McLaughlin and Harvard Law's Zittrain saved special scorn for the process by which Europe arranges for the "right to be forgotten" to occur, saying it forces Google to choose between an easy path of simply granting the request, or else risking an expensive legal headache.

They added that, while no one deserves to be judged only by their worst deed, the way to address the problem of indelible Google results is by adding more context, not by imposing censorship. In practice, this might mean encouraging search engines to offer a way for people to tell their own side of the story.

Zittrain also took issue with Nemitz's claim that Europe's "right to be forgotten" law is not censorship because it merely deletes information from Google, not from the entire Internet.

"It's like saying the book can stay in the library, we just have to set fire to the catalog," he said.

Who gets the keys to history? A final vote

The most compelling part of the event was the description of future dystopias that each side insists will emerge if the U.S. imposes – or fails to impose – a right to be forgotten.

According to the EU's Nimitz, these laws must be enacted before companies like Google and Facebook ([FB](#) -1.11%) erode every last drop of our privacy by collecting and selling data about everything we do. He said that Europe's own history shows that dictatorships invariably rely upon this type of constant surveillance and elimination of private life.

McLaughlin countered with a nightmare vision of his own. He described a future in which elites abuse right-to-be-forgotten laws in order to rewrite history, and erase people's ability to call up the past. He fears that, under such a system, the public Internet will become akin to the ever-changing photographs of the Soviet Politburo.

The audience, apparently, was more afraid of the former vision than of the latter.

At the end of the debate, the attendees voted 56% against the notion that the U.S. should adopt a right to be forgotten law. This was a significant change from the outset of the evening when only 26% had voted against. (The final vote also found 35% to be in favor of a right to be forgotten law, while 9% remained undecided).

The debate was moderated by ABC News correspondent John Donovan, and hosted by Intelligence Squared U.S., a non-profit foundation.

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