

Hard cases in internet regulation: the case of the right to be forgotten and net neutrality

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The internet has radically changed memory – and with it, the public perception of individuals. While the human brain recalls images, sounds etc. in an arbitrary and incomplete way, servers around the world store uploaded data accurately and comprehensively. Yet while the identity of an individual may be reconstructed with the use of data available online, these are all but a snapshot of the otherwise diverse life of the person concerned, willing to change and denounce earlier habits or beliefs. Besides relying on the normal workings of human memory, the law has long employed gag orders, anonymity rules, restrictions on access to archives, etc. to promote criminal rehabilitation or to protect privacy. These instruments are rendered more or less ineffective, however, in our increasingly digital world.

In its decision in C-131/12 *Google v AEPD and González* the Court of Justice of the European Union established the right to be forgotten (Rtbf) in European Union law, a concept also enshrined in the new General Data Protection Regulation (GDPR). Rtbf seems to be an important legal tool complementing more traditional instruments ensuring accuracy, up-to-dateness, lawfulness and the protection of data. While the Rtbf fits seamlessly with European privacy standards, service providers outside the EU are reluctant to adhere to it. In particular, they assert that any claim invoking Rtbf beyond European jurisdiction is an effort at exerting extraterritorial jurisdiction.

The Internet, since its creation, has been governed by the principle of neutrality which was defined by Tim Wu as an end aiming to maintain a system of belief about innovation, one that has gained significant popularity over last two decades. As such, the principle of net neutrality ensures the operation of the Internet as an open platform, which is fundamental from the aspect of the freedom of expression, too. While previously only the state presented a threat to the freedom of expression by its ability to censor opinions that were not favoured by the powers that be, on the Internet several private market actors have emerged that can, and often do, influence what content and, therein, which opinions reach its users. The course aims to present the regulatory regime of net neutrality in the United States and in the European Union.

GRADE EVALUATION

- Participation: 40% of the overall grade.

- A final examination lasting no longer than 45 minutes that will consist of essay-style question(s).

5 June (17:00 – 18:00)	<i>The right to be forgotten – Old wine into new skins? (Láncos)</i>
5 June (18:00 – 19:00)	<i>Challenges in implementing the right to be forgotten in a borderless cyberspace (Láncos)</i>
8 June (18:00 – 19:00)	<i>The principle of net neutrality and the main forms of discrimination, the debate in the United States.</i>
9 June (15:00 – 16:00)	<i>The Telecom Single Market Regulation and jurisprudence of the CJEU</i>
9 June (16:00 – 17:00)	<i>Consultation</i>
9 June (17:00 – 18:00)	<i>Test</i>

READING

Bunn, A. (2015). The curious case of the right to be forgotten. *Computer Law & Security Review*, 31(3), 336–350.

Láncos, P. (2018) Global Identity Management for Individuals? The Right to Be Forgotten and Issues of Extraterritoriality. *Central and Eastern European EDem and EGov Days 331* (July):91-102.
<https://ejournals.facultas.at/index.php/ocgcp/article/view/1668>

Bartóki-Gönczy, B. (2016): Attempts and the regulation of network neutrality in the United States and in the European Union The roads towards the ‘two speed’ internet, in.: András Koltay (ed.): *Media Freedom and Regulation in the New Media World*, Wolters Kluwer

Further sources

Ausloos, J. (2012) The ‘Right to be Forgotten’ – Worth remembering? *Computer Law & Security Review* 28:2, 143-152.

Bertram, T. et al (2019), Five Years of the Right to be Forgotten. *CCS '19: Proceedings of the 2019 ACM SIGSAC Conference on Computer and Communications*

Villaronga, E. F., Kieseberg, P., & Li, T. (2018). Humans forget, machines remember: Artificial intelligence and the Right to Be Forgotten. *Computer Law & Security Review*, 34(2), 304–313.

Regulation 2015/2120/EU on the open internet