**TEACHING NOTE:**

**Google and the Right to be Forgotten[[1]](#footnote-1)**

This case illustrates the following themes and concepts discussed in the chapters listed:

**Theme/Concept Chapter**

Organizational ethics, information technology ethics 6

Government regulation 7

The role of technology in society 11

Managing and regulating technology 12

Consumer rights, consumer privacy 14

Corporate reputation, image 19

**Case Synopsis:**

In July 2010, the Spanish Data Protection Agency ordered Google Spain and Google Inc. to remove the personal data of Mario Costeja Gonzalez from its index and preclude further access to it, ushering in the right to be forgotten in Europe. This right was not only in contrast to the freedom of speech in the U.S. but of Google’s own mission. Google Inc., was a technology company that built products and provides services to organize information. Founded in 1998 and headquartered in Mountain View, CA, Google’s mission was to organize the world’s information and make it universally accessible and useful. The case draws on publicly available data, including published interviews with Costeja, to explore the challenges facing the technology industry and global governments with regard to personal information and privacy. It challenges students to consider how businesses, governments, and society can better assure the integrity of both the global internet and personal privacy rights.

**Discussion Questions & Answers**

1. **Do you believe an individual should have the right to be forgotten, that is, to remove information about themselves from the Internet? If so, should this right be limited, and if so, how?**

**TEACHING TIP: DEFINING TERMS**

The instructor may wish to begin the discussion by asking students to define the *right to be forgotten.* The case defines this a concept as “peoples’ right to request that information be removed from the Internet or other repositories because it violated their privacy or was no longer relevant.”

The instructor may wish to create a board grid in response to student responses, as illustrated below.

|  |  |
| --- | --- |
| *Yes, individuals should have the right to be forgotten:* | *No, individuals should not have the right to be forgotten:* |
| * Personal data is personal and individuals should be able to control their own data * Personal information can be wrong or outdated, so individuals should have the opportunity to change or delete it * Personal data may have been uploaded by someone else, without the individual’s permission * Personal data can be mined without the individual’s knowledge or consent | * Personal information is most often entered by the person themselves, voluntarily * People should be more careful about what they share so that removal is unnecessary; it is an individual’s own fault if he or she posts incorrect or embarrassing information * Personal information is often already in the public domain * The right to be forgotten interferes with the public’s right to information * The right to be forgotten implies that someone—a government agency, Google, or someone else—would be in a position to judge if information should be removed or not. This would give the government, or Google, too much power. * A right to privacy would be very difficult to enforce because of the global nature of the Internet |

*Instructor prompt:* Are there circumstances under which the right to be forgotten should be limited? If so, what are these circumstances?

Students may offer a variety of answers to this question. This should be considered a “warm up,” since this issue is revisited later at the end of the case discussion. For example, the right to be forgotten might be limited where the individual was a public figure or where the information was of compelling public interest.

1. **How does public policy with respect to individual privacy differ in the United States and Europe, and what explains these differences?**

The case describes several key differences between public policy with respect to individual privacy rights in the United States and Europe.

In the United States, where Google was headquartered, no universal right to privacy existed. Strong free speech rights, embedded in the First Amendment to the U.S. Constitution, made very difficult any restriction of information posted online. The case notes that in the United States, the constitutional protection of free speech would conflict with a right to be forgotten, because such the right to be forgotten would impose an obligation on someone else to “forget,” or to remove information from public view. However, consumers’ rights to privacy had begun to be recognized in certain instances (e.g., an individual’s right to delete false information from his or her credit report).

In the European Union, by contrast, the right to privacy was widely protected by law. The European Data Protection Directive 95/46 defined the scope of national laws pertaining to personal data. Various European nations had enacted their own laws. For example, Spain, where the lawsuit described in the case originated, recognized the right to personal privacy, secrecy of communications, and the protection of personal data.

The case does not fully explain these differences, but implies that in the United States the right to be forgotten is limited by stronger free speech protections than those in place in Europe.

1. **In what ways has technology made it more difficult for individuals to protect their privacy?**

Technology is ubiquitous, and consumers often do not know when, how and their information is being used. As the case describes, the ease with which information can be shared, stored, and retrieved through online search raises issues of both privacy and freedom of expression. For example, when opening a bank account, joining a social networking website, or booking a flight online, a consumer may voluntarily disclose vital personal information such as name, address, and credit card numbers. Others can easily mine this data without the consumer’s knowledge or consent.

The technology behind the Internet made finding out about someone or something very easy – and immediate – rendering removal of any information difficult, and likely only temporary. Removal from one technology platform did not make it disappear somewhere else. Even if a link were removed, a searcher could often still find the information elsewhere.

1. **Do you think Google should be responsible for modifying its search results in response to individual requests? If so, what criteria should it use in doing so? Are there limits to the resources the company should be expected expend to comply with such requests?**

*Do you think Google should be responsible for modifying its search results in response to individual requests?*

The instructor may wish to create a board grid in response to student responses to this question, as illustrated below.

|  |  |
| --- | --- |
| *Yes, Google should be responsible for modifying its search request in response to individual requests:* | *No, Google should not be responsible for modifying its search results in response to individual requests:* |
| * Market share: Google is the largest and most commonly used technology platform for the Internet * Large scale consequences: Being “googled” can make or break a reputation * Google already had a policy to remove personal information upon request if it could expose an individual to specific harm, such as identity theft or fraud * Google has a policy of transparency * Google should follow the law where laws required this | * Google is a public company and not a government entity * Google has other stakeholders it must respond to other than consumers * There is no appeal process or governance of Google’s procedures * Google has a conflict of interest in removing information; its search is popular in large part because it is effective in finding information * Google is a private company; it not appropriate for a private company to be the judge of what information should be removed, especially without a process of appeal for those who work is suppressed |

*If so, what criteria should Google use in modifying search requests?*

Students may mention a number of criteria, drawing on their own ideas and those offered in the advisory council. These include:

* *The data subject’s role in public life.*  Did the individuals have a clear role in public life (CEOs, politicians, sports stars)?
* *The type of information involved.*  Information that would normally be considered private (such as financial information, details of a person’s sex life, or identification numbers) would weigh towards delisting. Information that would normally be considered to be in the public interest (such as data relevant to political discourse, citizen engagement or governance) would normally weigh against delisting. Google removed content that glorified the Nazi party, illegal in Germany, and content that insulted religion (e.g. illegal in India).
* *The source of the information.* The advisory report suggested that journalistic writing or government publications would normally not be delisted. Google frequently removed information for legal reasons – either valid notification from the copyright holder under the Digital Millennium Copyright Act (DMCA) or via a court order.
* *The time elapsed since the information was current.* As circumstances change, the relevance of information might fade. Thus, the passage of time might favor delisting.

**TEACHING TIP: GOOGLE’S PROCESS**

Students may wish to compare their ideas with Google’s actual practice. Further information is available online at: www.google.com/transparencyreport/removals/copyright/domains/?r=all-time

*Are there limits to the resources the company should be expected expend to comply with such requests?*

Although the case does not report how much money Google spent or expected to spend on complying with right to be forgotten requests, the amount could be substantial. Students may wish to discuss whether this expense should be borne by the company or another party or parties, such as the European Union, individuals requesting the removal, or national governments whose policies required Google’s actions. The limits to the resources Google is willing to pay directly relates to one of the text’s axioms – when one has a right, it is necessary to consider who bears the responsibility for enforcing that right. Even with Google’s vast wealth, its responsibility for enforcing the right to be forgotten should not be unlimited. The responsibility thus far has been borne solely by Google.

1. **If you were a Google executive, how would you balance the privacy rights of the individual with the public’s interest to know and the right to distribute information?**

Savvy students will point out that valid rights may well be in conflict; in fact, a conflict among rights is at the center of this case. On one hand, individuals have a right to privacy, and therefore to control the distribution and use of their own personal information. On the other hand, the public has a right to speak freely, and to distribute and access information. These two interests can and do come into conflict when the public desires access to information that individuals wish to protect from public view. Balancing these two conflicting rights is inevitably challenging. In making its decisions about delisting, Google executives will probably favor the public’s right to informational access, except in clear cases where the information is demonstrably false, the individual could be harmed, or the information is deeply private (e.g., health data) and unlikely to be of public interest. Savvy students may point out that Google may find it difficult to strike the right balance because of its conflict of interest: information that arguably bears a right to be forgotten may in fact be more likely to be sought by the public, and the company makes more ad revenue from popular searches.

**Epilogue:**

*In the United States:* In March 2015, President Barak Obama issued an Administration Discussion Draft called the Consumer Privacy Bill of Rights Act of 2015. Its purpose was to establish baseline protections for individual privacy in the commercial arena and to foster timely, flexible implementations of these protections through enforceable codes of conduct developed by diverse stakeholders. This draft made an attempt to define “personal data,” which was at the center of the Costeja case. As of October 2015, little progress had been made in moving this draft forward in the legislative process.[[2]](#footnote-2)

*In Europe:* In the wake of the 2014 decision by the European Court of Justice, various parties, in both the U.S., where Google was headquartered, and Europe, where the law applied, criticized the ruling. In response, the EU released a factsheet to address what it considered to be myths about the right to be forgotten. This may be accessed at:

[*http://ec.europa.eu/justice/newsroom/data-protection/news/140918\_en.htm*](http://ec.europa.eu/justice/newsroom/data-protection/news/140918_en.htm)*.*

*Google:* Google has complied with the ruling of the European high court, but only for European domain names and not for Google.com. In June 2015, the French data protection regulator, the Commission Nationale de l’Informatique et des Libertés, or CNIL, issued a formal order to Google to begin applying the right to be forgotten removals to all domain names of the search engine globally, including Google.com, not just those that are aimed at Europe, such as google.fr.

Google has maintained that it does not believe the French regulator has the authority to expand the scope of the rule. In July 2015, Google’s formal appeal to the CNIL stated that applying the right beyond Europe could open the door to more authoritarian governments attempting to apply Internet censorship rules beyond their borders. In late September 2015, CNIL rejected Google’s appeal, setting up what could be a long legal battle between the two.

In July 2015, *The Guardian* published an analysis of right to be forgotten requests processed by Google. It reported that Google had received 218,320 requests for delisting between May 29, 2014 and March 23, 2015. Of these, more than 95 percent came from “everyday members of the public;” less than five percent came from criminals, politicians, or high-profile individuals. Of all requests, 46 percent had resulted in a delisting. Requests involving “private or personal information” were much more likely to be result in a delisting than were requests classified by the company as “serious crime,” “public figure,” “political,” or “child protection.”[[3]](#footnote-3)

1. Teaching note by Cynthia E. Clark. [↑](#footnote-ref-1)
2. Available at *www.whitehouse.gov/sites/default/files/omb/legislative/letters/cpbr-act-of-2015-discussion-draft.pdf.* [↑](#footnote-ref-2)
3. “Google accidentally reveals data on ‘right to be forgotten’ requests,” *The Guardian,* July 14, 2015, *www.theguardian.com.* [↑](#footnote-ref-3)