

'RIGHT TO BE FORGOTTEN' ORDER RAISES WORRIES OF CENSORSHIP

Backers of privacy rights encouraged by European ruling

BY JOHN WILKENS

When Europe's highest court ruled last year that citizens have a "right to be forgotten" on the Internet, many legal scholars and privacy advocates doubted the decision would have much impact in the United States, land of the First Amendment.

Now they aren't so sure.

Data regulators in France last month ordered Google to break out a bigger eraser, removing links to outdated or irrelevant items not just from European Union searches, but globally. That means someone in San Diego who is Googling a person or place in Paris, for example, might soon find access to that information restricted.

Google has resisted the order as a form of censorship that "risks serious chilling effects on the web" and is considering its op-

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tions. Failure to comply could subject the company to escalating fines.

The order is also troubling to free-speech and media groups, who are concerned the regulation is so broad and vague it will cause Google and other search engines to err on the side of deleting links. They believe that will harm the public's right to know and create gaps in the historical record.

"The idea that after some period of time information in the public realm can be ordered erased is so Orwellian it's unnerving to an American sensibility," said Gregg Leslie, legal defense director for the Reporters Committee for Freedom of the Press, based in Washington, D.C.

Privacy-rights backers, though, are encouraged by what they see as a necessary step in giving people some control over the ever-invasive Internet, where bits and pieces of everybody's lives are collected and (in theory) stored forever.

"Taking the position that nothing must ever be removed no matter what is a very callous thing," said Liza Tucker, a consumer advocate for Consumer Watchdog. She pointed to an Orange County family who found photos of their dead daughter — decapitated in a car crash — spread all over the Internet. "That kind of thing is just wrong, and it doesn't serve anybody's interest."

Consumer Watchdog, based in Santa Monica, has

petitioned the Federal Trade Commission to order Google to begin recognizing the "right to be forgotten" in the United States, too, arguing that it's an unfair business practice to do so in Europe and not here.

322,000 requests

Five years ago, a lawyer in Spain was bothered that anytime anyone Googled his name, two short items published in the newspaper La Vanguardia in 1998 popped up, detailing financial difficulties that he had since cleared up.

He petitioned computer-privacy regulators, demanding that the newspaper take the items off its website and Google stop linking to them. Citing press freedoms, regulators rejected the request aimed at the newspaper, but granted it against Google.

The case made its way through the courts and ended with a broad directive allowing people to ask search engines to remove links to items that are "inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed."

Since that decision by the European Court of Justice in May 2014, Google has received more than 322,000 requests for links to be removed from 1.1 million URLs. The company has granted about 42 percent of the requests, with the vast majority of them involving private or personal information like

home addresses.

To get something erased, a person has to fill out a web form explaining what links should come down, and why. To prove that the person making the request is the person in the links, some form of identification is required.

Google's "removals team" then evaluates the petition, weighing "whether or not there's a public interest in the information remaining in our search results." Is the person an elected official? If it involves a criminal conviction, does the crime relate to the person's occupation?

Among the requests Google said it has approved:

- An Italian woman who wanted links removed to a decades-old story about her husband's murder that included her name.

- A Latvian political activist who wanted links removed to a story that identified him as the victim of a stabbing at a political rally.

- A Belgian man who wanted a link removed to an article about a contest he participated in as a youngster.

Among the requests Google has denied:

- An Italian man who wanted links removed to articles about his arrest for financial crimes.

- A prominent businessman in Poland who wanted links removed to articles about his lawsuit against a newspaper.

- A priest in France who wanted links removed to ar-

■ The San Diego Union Tribune ■ Oct. 4, 2015

ticles about his conviction for possession of child pornography and banishment from the church.

Some of the decisions have generated controversy, especially in the United Kingdom, where newspapers have taken to listing on their websites the URLs of articles that Google has de-linked.

In one instance, Google removed a link to a story about a minor crime. The newspaper wrote a story about the removal. Google then got an order to remove that story, too. Which it did.

Censorship?

Supporters of the "right to be forgotten" argue that erasing links isn't really censorship, because the information is still available at its source — a newspaper website, for example, or a Facebook page.

But it certainly becomes much more difficult to find.

"It's like the old card catalogs at the library," said Teri Karobonik, a staff attorney at the New Media Rights program at California Western School of Law in San Diego. "If there's no card for a particular book in the catalogs, you could still find the book, but it would be a lot harder. On the Internet at this stage, delisting something from a search engine means it will get lost in the sea of content."

That's not necessarily a bad thing, according to Paul Stephens, director of policy and advocacy for the Privacy Rights Clearinghouse,

based in San Diego.

In the days before the Internet, he said, people had "privacy by obscurity." Public records of reputation-shattering events — arrests, criminal convictions, lawsuits, old newspaper accounts — were available, but only by going to the archives in person.

"You couldn't get it just by logging on to a computer," he said. "Now you can, and in the digital era, everything becomes a permanent record. As a privacy advocate, I like the idea that information that is no longer accurate or relevant can in essence be available in a manner that is more similar to the old days."

Until recently, the debate about all this was mostly academic in the United States. The regulations were a European thing, a reflection of prevailing attitudes there that value privacy as a fundamental human right.

Google treated it like a European thing, too. When it granted a request to remove a link to information, it did so in the Internet domain of the country where the person making the request resided — Google.de for Germans, Google.es for Spaniards, and so on.

But last month, French regulators told Google it has to clear the links from all its search engines, including Google.com, the one used in the U.S.

"I was critical of the original decision because it puts Google in the position of being judge and jury on a

wide range of requests for erasing information, but the latest ruling is also very troubling," said Jules Polonetsky, executive director of the Future of Privacy Forum in Washington, D.C. "We're going to have situations where U.S. consumers are going to be banned from getting information that could be useful to them."

He mentioned a blogger in France who recently had a review of a restaurant taken off search pages. "So what if I go overseas and some Airbnb host rips me off and I post something about it and then Google gets an order to hide any links to it? That would be terrible," he said.

Stephens said the "right to be forgotten" isn't an issue that's attracted much attention from people in the U.S. who contact the Privacy Rights Clearinghouse. It's more common to get complaints about data-brokers who amass information about people from public records and then sell it, he said.

But it may become an issue here, especially if Consumer Watchdog gets anywhere with its petition to the FTC to bring the European idea to these shores.

Last month, an Ipsos survey of American Internet users found that 69 percent believe in the "right to be forgotten," and only 29 percent said they think it allows for censorship.

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