Chapter 2
Protecting Youth from Themselves in the Media: The Right to Be Forgotten

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Introduction

Developments in telecommunication technologies and the Internet have led to the accumulation of a tremendous amount of information on the Internet. It has allowed people to easily find information on the Internet, meaning that it brought all the information to public. People have more information about themselves that are publicly available on the Internet than they probably like it to be. Some information might be considered unimportant, such as high school yearbook picture, while others could be quite important, such as a video clip of and individual engaging in sexual activity. What makes the public nature of available information potentially concerning is that, while some information and contents were posted by individuals themselves, much content is either posted or reposted by someone else, disregarding the knowledge or the approval by the concerned person.

Youth have become a group most affected by publicly available online information. Youth tend to use the Internet and online space to its maximum. They not only may use any information available online to their advantage but they also may contribute to it, meaning that they upload contents and information online. Once uploaded, information become publicly available information, which can then be searched for, viewed, downloaded, and duplicated elsewhere. Yet, youth often fail to consider such outcomes when they post information online. By the time that they regret having posted it and try to retract it, they may realize that a copy of it is still out there and there is not much they can do about it, even without their original post. Moreover, when youth find out that someone they considered close—either a friend or an ex—had uploaded some humiliating image, for example, they would easily feel a sense of betrayal that the contents were posted without their knowledge. Some youth may find it difficult to deal with the embarrassment they feel or

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with the mockery they receive by other people, which may lead to extreme measures.

Although information available online are the same regardless of the region, the United States and European Union treat it differently. Currently, online information and contents are protected by the freedom of expression or freedom of press based on the First Amendment to the U.S. Constitution. On the other hand, the European Commission has recently proposed a regulation and a directive to enhance protection of the so-called "right to be forgotten." This protection has its roots in the right to oblivion found in French law, which allows people to request the erasure of their information that they consider are no longer relevant to themselves. Both responses to online content are meant to protect people and their rights, and they sometimes collide with each other. However, as much as it is easy to recognize and protect the freedom to express, it is also easy not to realize the pain someone experiences when certain information about them can taunt them for the rest of their lives. The vast amount of information and content on people that is posted and stored online make it time to think about opening a possibility to retract private information and contents that have been released to public and placing it back in individuals' private domain when they request it.

It seems necessary to seek some insight into what the European Commission's proposal contains and attempt to find a link that could, at least, raise a discussion about whether similar legislation could be considered in the U.S., especially for youth. There have already been some limited efforts in the U.S. to protect youth and their personal information online from exploitation by companies. Despite receiving some criticisms, these efforts provide a good starting point about protecting youth in online settings. Youth's experiences may reveal the time to expand active state intervention to protect youth from physical harm to psychological and mental harm that stem from the use and abuse of publicly available information youth wish to keep private.

Dealing with Information: Pre-Internet and Post-Internet

There is an abundance of information available on the Internet and there seems to be no limit on how much more it can accumulate. This means that anyone looking up a keyword on search engines, such as Google will find hundreds, thousands, or more results relevant to that word, scattered throughout numerous websites and servers. The same goes for a search on someone's name. For example, a Google search of the name *G. R.* (abbreviated for the privacy of individual) presents about 15,300 results. Included in the extensive search results is a video clip on YouTube that was uploaded in March, 2008 with about 43,000 views and 60 comments. This can be a good thing for *G. R.*, if he is serious about earning fame; however, he might not enjoy the 15,000 views resulting from simply typing in his name in Google. It turned out to be the latter for him. Apparently, more than 10 years ago, he had produced a video recording of himself mimicking Darth Maul using golf ball

retriever as the lightsaber. The videotape was later found by one of the schoolmates, distributed among others, and eventually ended up getting on the Internet. Consequently, he had to drop out of school and spend some time at a psychiatric ward due to cyber-bullying before he finally moved on to law school (Wei 2010).

Before there was Internet, personal information—whether it be demographic information, such as an address, contact information, and even Social Security Number or contents produced by individual, such as photos and videos—were generally within arm's reach of the individual. When disclosed to someone else for any purpose, people would trust that the intended recipient of that information would be the sole audience of the information. Even when it was to be shared with others, the actual audience was still limited to whomever the original recipient was physically able to share it with. And generally, anyone who has seen some information is likely to forget it with time—either they will forget the exact content of what they have seen or the fact that they have seen it at all. People were under the privilege of forgotten facts when they relied on their physical brain and their ability to remember (Korenhof et al. 2014).

With the Internet, actual audiences of contents revealed online is not limited to the originally intended people. People can easily repost the content or move it to another place for others to view, possibly expanding the audience to unspecified individuals. Unlike the human brain, the Internet and servers do not forget. When something is posted on a website, it gets stored on the server for the website. It will also get added to the list of results when a keyword for that content is typed into any search engines. Any time a person types in the correct keyword for the content, it will be pulled up from the server to the search engine results. Hence, once information gets posted online, it becomes "remembered-by-default" (Korenhof et al. 2014, p. 7). This process allows easy access of information to those who can search for the correct set of keywords. *G. R.* may be one of many people who have become famous over the Internet without any intention and expectation to be so. Yet, that is what happened and the nickname attached to the video has certainly helped. Without the Internet, he would have still been ridiculed and shamed by schoolmates, but it would not have expanded to the world outside of his neighborhood.

As was the case for *G. R.*, embarrassing content made public can be very detrimental—particularly to youth. Social networking is an important part of everyday life for youth today since it is the main method of communication among each other. Even when they are in close proximity to each other, youth will communicate through social network services (SNS) by posting pictures that they took or something they saw on the Internet that was interesting and sending instant messages. They are more comfortable with sharing contents on their SNS as well as looking at and responding to contents shared by their friends. They are also comfortable at switching between different mindsets when they come across any online contents—between the "what's theirs is theirs" mindset and the free-for-all mindset (James 2014). When the content contains some kind of legal or penal aspect, youth would easily pick up the what's theirs is theirs mindset. They are quickly able to recognize a possible punishment onto themselves for not properly

handling the content. The free-for-all mindset is triggered for content that are meant for entertainment purposes. There is nothing at stake for them when they use it in other ways than just viewing it. They not only switch between these mindsets for contents that they come across the Internet, but they also expect others to extend similar courtesies to them for contents that they post. The problem arises when peers think less seriously about the confidentiality of the content that a youth posted and share it with others when she or he meant it to be kept within the limited audience. When that trust is broken, especially when the content is something that is humiliating, youth are not able to consider carefully how to deal with the situation and how to avoid drastic consequences.

So, particularly with youth, the inability to have control over their own personal information and content is quite important. Just because some information is shared as an online file instead of a hard copy offline, the information should not be treated differently. Also, when one has the right to move their personal information to a public domain, they should also have the right to do the opposite—to restrict information of themselves that has been made public, including making it private again (Ambrose 2013). And youth, whose "reasoning about real-life problem is often not as advanced" (Steinberg 2005, p. 72), are bound to post something online that they would eventually regret. Hence, the right to be forgotten that is currently extensively discussed in the European Union is to grant the right to give a chance for people to remove their own disclosed information from the public and make it private again.

Youth and the Media

What Is the Media for Youth?

Youth generally tend to be more adept with technology than their older counterparts. They can quickly and easily learn to use new technology and can perform better than adults on technologically advanced tasks (Davies and Eynon 2013). Youth today grow up having media devices (i.e., computers, smartphones, software, applications, and the Internet) at hand, whereas adults usually learn how to use them only when they find the need for them. Adults who are in professions that involve frequently writing reports have learned to use a word processing software like Microsoft Word, while those who handle mostly numbers would have learned software like Microsoft Excel. In contrast, youth growing up today most likely already know how to use both softwares. Still, caution should be used when asserting that *all* youth have the innate ability to use technology just because they grew up having them available. They, too, go through some kind of a stepwise expansion on how they utilize the media based on their needs. It apparently feels almost natural for them to engage in more various online activities than it does for the adults.

As youth gain experience using the Internet as they age, they expand their online activities widely (Livingstone and Helsper 2007). Initially, their experiences with technology may start with playing games, receiving and/or sending an email, or, as many parents and teachers might hope, researching for schoolwork. For such activities, they will need to be connected online, yet it is not necessary to interact with another person; they only need to have access to the content that is available online. From these mostly isolated activities, they easily begin to expand their activities to those that involve interactions with people. This would include interacting with both people who are already in their social networks and new people. And furthermore, they expand the scope of their online activities to the point where they start to contribute to online content rather than simply consuming it (Davies and Eynon 2013). That is, they post their opinions and their knowledge on discussion boards and share their contents online. Jenkins et al. (2009) call this a "participatory culture," where there are

1. relatively low barriers to artistic expression and civic engagement,
2. strong support for creating and sharing creations with others,
3. some type of informal mentorship whereby what is known by the most experienced is passed along to novice,
4. members who believe that their contributions matter, and
5. members who feel some degree of social connection with one another (Jenkins et al. 2009, pp. 5–6).

Nonetheless, technologies, such as laptops, tablets, and smartphones allow youth subsumed under the participatory culture to perform many of their everyday tasks online: anything from studying and working to socializing with those within their networks and even to simply have fun (Davies and Eynon 2013). Youth are constantly connected to the Internet so that they can easily consume and/or contribute to the abundant online content and manage existing and new interpersonal relationships.

Tool for work. Soon after computers emerged and became widespread, learning to use one has been part of formal education. It is now common for students of different educational levels to do a search on the Internet and to type their work by using word processing software instead of picking up a physical book and writing by hand. And students reach levels of proficiency very quickly, knowing that their academic success is associated with these skills. Less commonly, some may need to learn software meant to perform some highly advanced tasks for certain professions. In this case, however, it is most likely that their personally owned media are not equipped with such software. So, they have no choice other than to rely on schools for access to such software and the training to use them. For the majority of youth, however, the use of media for school work (i.e., web search and producing reports), in general, may seem redundant. When schools keep focusing on teaching common media skills, it is easy for youth to feel that their school merely teaches either what they already know or what they could easily learn on their own (Davies

and Eynon 2013). When this continues, the role of media shifts toward leisure and personal use and away from work for school.

The role of technologies as tools for work (or learning) also diminishes because of the way some teachers view technologies (especially portable devices such as smartphones and tablets) being used in class. Teachers often see these devices more as a distraction from learning because of the many functions of these media that are not geared toward learning. Yet, youth, being very adept with media, are using these devices for both learning and leisure purposes, often switching constantly between the two. Davies and Eynon (2013, p. 29) call them "constructive multi-tasking" and "distractive multi-tasking," respectively. Adults tend to see more of distractive multi-tasking occur, which is why they often form a negative view of youth's use of media. However, youth view these devices as a potential for learning, just not in formal education settings. Being more actively involved in participatory cultures, youth hope that their teachers and schools will take more proactive measures in using these informal learning settings into their formal education (Davies and Eynon 2013). For example, using online forums can produce more elaborate discussions, taking discussions to online forums dedicated for classes to allow students to have more chances to say what they know and what they feel about topics. They could perform online research to find points to argue for or against while they are connected to the Internet, which could broaden the discussion further. However, as this kind of use has yet to take place in schools, the primary use of the media by youth is mostly toward engaging in participatory cultures with their friends and exploring the larger world on their own.

Tool to Stay Connected. The most common use of the media for youth is to stay connected with their friends. It is very important for youth to maintain connections with peers even when they are not in the same space as it constantly reinforces their relationship. There are multiple ways of doing this: talk on the phone, communicate by text and instant messages, and post comments and contents on SNS. Talking on the phone is the most typical use of a mobile phone, as it allows quick communication with others. However, it limits the person from performing multiple tasks at the same time and simultaneous communication with multiple others is also not possible. This may be the reason for youth who are multi-taskers to refrain from spending too much time talking on the phone. Davies and Eynon (2013) found that older youth, who are likely to be also more experienced with the media, tend to be a more constructive multi-taskers than their younger counterparts. So, talking on the phone may not be the generally preferable way for youth to communicate with friends as they get older and accumulate experience using the media.

In contrast, instant messages, such as Snapchat or Facebook message, is the alternative method of communication that resolves the limitation of phone calls (Subrahmanyam et al. 2006). An advantage of instant messages over direct phone calls is that a single person is able to engage in multiple communications with different individuals/groups varying across from gossips about celebrities to school activities. One can choose to communicate one-on-one with a friend or add other friends into the conversations to make it a group conversation. Yet, the instant

message communication is a relatively private one that is kept among the participants of the conversation. Still, there are several routes through which the private conversation can get revealed outside of the participants, as much as any communication types. However, the conversation is written in words and it may work as an evidence of what was said, whereas a phone conversation will be hearsay unless someone intentionally recorded the conversation.

Another popular way for youth to stay connected is via SNS such as Facebook, Twitter, and Instagram. Social network services are a more public, relaxed atmosphere where people can view and leave posts and/or comments. These posts can be open for view by either only those who are within the network or by the general public. And no one is expected to respond to posts immediately, as it is with instant messages. According to Davies (2012), youth simply having an account on SNS itself is a statement of their own identity, and the contents (i.e., profile, "friends list," and posts) are the narratives about how they would like others to see them as. Profile is an introduction page where youth can express who they perceive themselves as (Boyd 2007). Users can use texts (e.g., stating their personal information or a phrase they like), images, and videos to create their profiles. When they get connected to another individual as friends, they will be placed onto the "friends list" where the image selected is used to represent them on that list. The "friends list" represents the user's sociability (Boyd 2007; Davies 2012). Users who prefer to keep a tighter network with only those that they consider real friends (often, friends from real life) are likely to have their profiles visible to friends only and maintain a smaller friends list. In contrast, some users may want to widen their network with anyone who also is willing to do the same. These users can have their profiles publicly visible and accept anyone into their friends list and even actively request others to accept them. Once connected, these new "friends" have gained the authority to view and reply to posts. Any posts and contents posted in SNS are potentially vulnerable to be made public and the sense of privacy becomes weak. Even though most SNS platforms allow users the power to set their privacy settings, the contents are not entirely under the control of the users once posted. Anyone who is given the permission to view the contents can also capture, store, and share them. So it is possible for the concerns of this chapter to arise. The ability to reproduce any content into multiple copies makes users vulnerable as they do not retain the sole control over their own contents.

Tool to Explore. Another popular way for youth to use the media is to attempt to explore what is outside their daily life routines. They could always try to learn and understand about something by the means of a search—such as history, regions, current news, celebrities, or famous people, and tour attractions. They could also attempt to explore the world by meeting new people. As discussed earlier, youth use social networking for this purpose. However, there are other outlets more widely used, one of them in particular being online chat rooms. Public chat rooms are a great venue for youth to meet and make new friends and, during the process, to explore their own selves (Subrahmanyam et al. 2006). Subrahmanyam et al. (2006) found that younger youth are generally more interested in exploring their

identity whereas older youth have moved past identity issues and are more interested in sexual issues.

There are a wide variety of chat rooms that exist in the Internet. Some chat rooms are pure text chat rooms while others allow video chat, some connect only two users at a time while others place multiple users into a single room, some connect people randomly while others connect users based on their preferences, such as gender and age, and some chat rooms are free while others are available for a fee. For youth, one factor that may factor into deciding which venue to use might be the fee, preferring ones that are available free. However, these venues tend to lack supervision by the provider (Subrahmanyam et al. 2006). This may be an added benefit for some youth, especially, when their intention is to explore things of a sexual nature. And youth rarely engage in chats under parental or guardian supervision. Therefore, in the process of exploring through chat rooms, they are mostly free from supervision and vulnerable to potential harm from strangers they interact with. Unfortunately, these free yet vulnerable sites are where youth with different intentions often interact. Those who visit the site because of its lack of fee are ambushed with sexually explicit pass made by people who came for the lack of supervision, with the intention to explore sexual themes. When taking age and gender into account, more harm is likely to occur among young female youth (Subrahmanyam et al. 2006).

Issues from Using the Media

One of the most critical issues for youth, in general, is figuring out their identity and sexuality. Adolescence is a period of life, during which people are not afraid to take risks. Current technology opens up more opportunities for people to take even more risks (Staksrud 2013). For youth, more risks are involved when they go online to explore identity and sexuality than in real life. The reason for this lies in the characteristics of an online communication—it lacks visual and auditory cues, it is anonymous, and it occurs in space that can be kept exclusive to online settings (Davies and Eynon 2013; Valkenburg et al. 2005). Online communications leave out what Mehrabian (1972, pp. 1–2) refers to as "nonverbal behavior" or "implicit communication behavior." Nonverbal behaviors include facial and vocal expressions, hand gestures, posture and position, and movement and implicit aspects of verbalization (such as length of communication, smile, frown, and head nods). Instead of these nonverbal behaviors, Internet users use graphic contents to substitute the visual and audio cues and represent their condition and feelings. Without these nonverbal behaviors, a conversation is easy to be miscommunicated, resulting in misunderstandings. So, the Internet provides means in which youth get to fulfill their curiosity in ways that satisfy them, but with heightened risks.

Experiment with Identity. While people may have only one self, they can have several identities that vary depending on who they interact with at the time (Valkenburg et al. 2005). Youth today can interact and be friends with a wide range

of people, from those who grew up together in the neighborhood to those they only know by usernames or nicknames at a website. They could display one identity to their already formed peers—through instant messages and SNS—while they try something different toward slightly more distant peers and strangers—through chat rooms. And when interacting with family members at home (such as their siblings and especially with their parents), they will display yet another identity.

Identity experimentation on the Internet (i.e., on SNS and chat rooms) begins with how users construct their profiles and continues throughout interacting with others. People are prompted to construct a profile when they sign up for the website. Before meeting anyone, one would have to think how they want to be perceived by other users. In this process, an experiment of their identity has begun. Consider, a male youth who wants to meet and make new female friends online. To set up an account in a public chat room, he would put up information of himself that he is comfortable revealing to others (i.e., age, sex, location, schools attending, etc.). Then, he will consider what photo to use—for example, a full-length portrait of himself fully suited up, a picture of himself at a beach party holding a red plastic cup, or a picture of him sitting in the driver's seat of an exotic convertible car. Alternatively, he can choose to use a picture that is not of himself—such as his prized possession or something of interest. Each of these pictures can give a very different impression to audiences. Some people may find the first picture more appealing while other people will be attracted more to the second or the third picture. So, an attempt to play with identity emerges when trying to appeal to certain type of audiences.

The Internet, in particular, allows youth to meet random people who they could potentially build a strong relationship with. When youth go online to meet new people, they may have formed an idea about who they would like to meet: someone who is similar in age or someone older/younger; someone who is opposite/same gender; someone who is from a near location or someone from a place they have never been to; and type of interest. To establish whether the other person is of interest, users commonly determine from the nicknames and/or ask for their "a/s/l (age/sex/location) chat code" (Subrahmanyam et al. 2006, p. 396). As such, these types of information that are critical in forming first impressions, which could lead to subsequent interactions, are often the self-professed ones. And youth are more likely to take a different approach toward strangers than they would toward their school friends, where there is more liability against their reputation going bad among others.

Sexual Exploration. The Internet has become the most popular venue for youth to explore sex. Smahel (2003, as cited by Subrahmanyam et al. 2006) found that the Internet was the place where five out of 15 youth had experienced their first sexual experience. There are probably many ways for youth to explore sexuality on the Internet, from something as simple as watching pornography to something that is more direct such as soliciting someone for sexual conduct.

One commonly used method to explore—as discussed earlier—is to chat with unknown people in online chat room sites. One of the most common way to imply their intention of sexual exploration, according to Subrahmanyam et al. (2006), is to use a sexualized username. Usernames can be any word or nonword and it can be

utilized to display who they are and what their interests are. Sexualized usernames can be used for different reasons from boasting about their physical attractiveness to expressing their sexual identity. As such, usernames may act as a filter—warning against users who are uncomfortable to keep away and inviting those who have similar interests.

For youth who are interested in exploring sexuality but are uncomfortable with a sexualized name tagged to themselves may rather simply make blunt sexual remarks to others for response instead. An analysis conducted on 38 chat sessions over a two-month period—in both monitored and unmonitored chat room sites—revealed that there was about one sexual remark for each minute of chat conversation (Subrahmanyam et al. 2006). In addition, the frequency of implicit sexual remarks was not that different between monitored and unmonitored chatting sites; however, explicit sexual remarks were made twice as much in unmonitored sites compared to monitored ones, along with more frequent obscene utterances and bad languages. Given that more youth tend to prefer visiting unmonitored chatting sites (for reasons discussed earlier), more youth are likely to be exposed unexpectedly to these remarks and utterances. Some may feel disgusted and leave immediately, while others may feel coerced to stay and engage in longer conversations. It is in the latter case where youth can easily be compelled to reveal more of themselves, leading up to nude images, and to fall victim to crimes such as sexual harassment.

Problems with the Media

As discussed above, the media is a great way for youth to connect with others—both previously known and unknown people. However, both types of interactions contain potential harm to the individual. In the case of the more exploratory use of media (e.g., chat rooms), one is often blind to the real intention of the person at the other end. And youth could easily become victimized by verbal abuse and cybercrime at the site. Or a conversation could lead up to an offline meeting, where they could be victims of other crimes. In the case of using the media to reinforce the relationship (e.g., SNS and instant messages), one may have said or posted something that they regret later but cannot retract. In situations involving the latter case, correcting for mistakes is not as easy as one might think.

People often tend to think that there exists certain privacy for different online communications, whether the audience is only a handful of specified people (as in instant messages) or a larger group of people (as in SNS). The expectation is that what has been said and posted stays within the group. However, the (perceived) privacy is only guaranteed as long as all the participants agree to keep them private (James 2014). Unlike a conversation between two people or an object like a picture handed to someone, online posts or comments are semi-permanent and they can be easily reproduced for distribution. Anyone can copy-save or take screenshots of an online content for multiple purposes. Digitalized images, in general, can cause problems when distributed through the Internet faster than people had imagined.

For any reason, people can and do reproduce digitalized contents. And one of many purposes is to share it with others. The moment any digital content is reproduced, the original owner loses control over the content and this may lead to some devastating consequences (e.g., "sextortion" and loss of a professional job).

Another issue with the youth's use of media is in the relationship between youth and their parents. Parents play a critical role in introducing the media to the youth (Davies and Eynon 2013). Youth today begin to be exposed to the media at home at an early age when parents use them to control their behavior. Some parents may limit the amount and the ways their children use the media while other parents will allow their children to use them as long as they are not causing trouble. The attitude of the parents likely shapes the way that youth perceive the media. Yet, no matter what orientations they have about the media, youth eventually end up being more experienced with technology and the media than their parents (Subrahmanyam and Greenfield 2008). When youth reach this level of adeptness in technology, it becomes difficult for parents to recognize and to intervene when their children are at risk during online activities.

Parents today are more aware of the environment that their children experience on the Internet but, nonetheless, they are at a disadvantage in keeping up with the fast-paced change of the media. So, even if the parents constantly try to assert control over their children's online activities, youth are more successful in averting these supervisions. A good example of averting parental supervision is in the use of acronyms. Acronyms such as "lol" (meaning, "laughing out loud') and "rofl" (meaning, "rolling on floor laughing") are now used extensively—not only by youth but also by adults. On the other hand, there are more acronyms created and used than one can fathom. Acronyms such as "iwsn," which stands for "I want sex now" and "pir," meaning "parents in room" are ones that youth currently use that they would not want their parents to know of (Wallace 2014). Youth's having ways to keep certain online activities under the radar of their parents might give them thrill and excitement, but they are putting themselves in harm's way, which could have been avoided had their parents been able to provide proper guidance.

The Right to Be Forgotten and the Right to Privacy

For the majority of audiences in the U.S., the right to be forgotten might be an unfamiliar term. What does it mean for one to have the right to be "forgotten?" As will be reviewed later, it is basically the right of individuals to hold control over their personal information on the Internet—to remove any of their own information from public's view. Then one might ask, "Is that necessary? Would it not violate the freedom of expression from the First Amendment?" However, there is also the right to privacy, which is often not emphasized as much as the freedom of expression; yet it is widely accepted by many states and courts throughout the nation. The idea of people having the right to privacy is often neglected because it has always been the default that any personal matter was a private issue and only the things needed to be

known by the public was made public by someone expressing it. And although the two—freedom of expression and the right to privacy—seem to contradict and collide with each other, they protect two different rights, both of which should be enjoyed by any person. It does not have to be that one must to be relinquished in order to protect the other. It may be simple to consider the right to be forgotten as a way of expressing the right to privacy. And it may be particularly useful in the context of the Internet and online information.

The Right to Be Forgotten in EU

The discussion of the right to be forgotten was triggered with a court case that was brought to the Court of Justice of the European Union (CJEU). It was case number C-131/12, which is discussed later. Even before that case, however, the EU already had legal grounds for individuals to ask for "controllers" [or "the natural or legal person, public authority, agency … which … *determines the purposes and means of the processing of personal data*" (Article 2 (d) of Directive 95/46)] to erase incomplete or inaccurate information they hold, under Article 12 of Directive 95/46, entitled "Right of Access" section (b). However, the 2012 CJEU decision developed a proposal for the right to erasure of personal information as its own article. This proposal requires that any company holding any personal information and that has received a request for an individual's data to be erased must comply with that request. The proposal is yet to be enacted in EU, but when (and if) it passes, it will have massive impact on not only European citizens and companies but also on any company that operates (i.e., accumulates, stores, and uses personal information) in EU. Therefore, this right is something that needs to be on par disregarding the geographic location. It cannot be acknowledged in one part of the world while it is not at another for it will confuse the companies that operate globally, people in different regions will be afforded different rights, and the companies could be deemed as violated the right.

Immediately following the results of the case, the European Commissioner for Justice announced a proposal for a regulation and a directive on privacy rights that allows one to request erasure of their personal information. This proposal is an expansion of the EU General Data Protection Act in Article 12 (b) of the Directive 95/46/EC of 1995. The root of the right to be forgotten can be found in the general right to privacy from the French law—the right to oblivion (*le droit à l'oubli*). The right to oblivion allows any person that has been convicted of a crime and has been rehabilitated to be able to "object to the publication of the facts of his conviction and incarceration" (Rosen 2012, p. 88). The right may be complex in practice, but in theory it is quite simple. It recognizes that people can change. That recognition results in the right to oblivion that allows for any past information that is not currently relevant to the individual to be erased so that it does not keep reminding them of their past.

The Right to Privacy in the U.S.

Discussion about importing the right to be forgotten into the U.S. points to its relationship against the freedom of expression (Ambrose 2013; Bennett 2012; Korenhof et al. 2014). In the U.S., freedom of expression is considered as one of the highest valued rights of citizens, with it being stated in the First Amendment to the U.S. Constitution. When people are given the power to have their information (such as "the facts of his conviction and incarceration") be removed for reasons of privacy, it is thought to go against the right to express, especially for the media or anyone who has access to such information and wants to use it to express their thoughts. Moreover, the argument is that the Constitution does not recognize any right to protect individual information or, more broadly, to protect individual privacy that is equivalent to EU's right to oblivion. Therefore, it is hard to take the right to privacy to have similar importance as the right to express on face value. However, the need for protecting individual privacy had been discussed for quite some time in the U.S., first initiated by an article published in the Harvard Law Review in the late nineteenth century.

With a straightforward title, *The right to privacy*, Warren and Brandeis (1890) raised a concern that there is a potential danger to individual and their personal information to be publicly exposed by the abuse of photographs and news publications. They saw photographs and newspapers as tools that could potentially be used to invade the privacy of individual, or using Judge Cooley's term, "the more general right of the individual to be left alone" (Warren and Brandeis 1890, p. 205). They saw the protection of any type of content made and distributed (e.g., any publication that are afforded copyright) as part of the larger protection of individuals against the world. So, their argument was that, if one is able to defend his work of expression, one should also be able to defend his own face against being made into a photo and being released by photographers and news media without his consent. Since the publication of this article, the courts around the nation had faced cases of individuals arguing for their right to privacy. With no legislation protecting such right, courts went back and forth between accepting the right or not. Eventually, state legislatures enacted statutes protecting the right to privacy (see Prosser 1960).

Four Types of Invasion of Privacy. With states enacting statutes on privacy and cases accumulating in courts, Prosser (1960) identified four kinds of invasions that comprise the protection of privacy:

1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs.
2. Public disclosure of embarrassing private facts about the plaintiff.
3. Publicity which places the plaintiff in a false light in the public eye.
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

The first type of privacy invasion is intrusion. Intrusion is made against something entitled to be private. When first considered, intrusion started with physical intrusion such as trespassing into home and going through someone's bags. Soon, it

expanded beyond that to eavesdropping onto other's conversations by using wire taps and peeping through windows. So, intrusion cannot be argued for on anything public such as public space. The second invasion of privacy, public disclosure, occurs when a matter that is private in nature is disclosed to public. This restricts the disclosure to public ones and not private ones, meaning it is not a public disclosure if something is disclosed only to certain individuals or small group of people. Also, the disclosed matters must be private facts; hence, any information that is already public information—even if not necessarily accessed regularly by the general public—is not subject to the invasion of privacy by public disclosure. Next invasion of privacy involves false light in the public eye. This is when photography, name, or any information of an individual is used for false reasons. A typical example is fictitious testimonial in advertisements and the use of name and photograph in public gallery of convicted criminal. A problem that is common with false light in the public eye—also with disclosure of private matters—is that the subject of protection is objectionable by reasonable man, meaning that those who are sensitive about their privacy and self-preservation will not be protected. Finally, the last invasion of privacy involves appropriation of someone's information for the benefit of the appropriator. When certain names are used for creative works such as novels and comic strips, the fact that one's name is used there does not qualify to be considered an appropriation. There must be some indication that the name in the creation is used specifically because of that individual. Another factor to consider for appropriation is whether the author has appropriated the information for his/her own benefit.

An important note to add about invasion of privacy is consenting to invasion of privacy. Consent to invasion of privacy, according to Prosser (1960), could be given in one of two ways: as a contract-based consent or as a gratuitous consent. The fact that consent is given and the specific range of that consent are fairly straightforward for contract-based consents. When the consent is agreed by contract, that consent is irrevocable, whereas consent is ineffective for any invasion that goes beyond the contract. On the contrary, nothing is quite clear for gratuitous consents. Gratuitous consent is not always given explicitly as someone saying they approve the invasion; it could be implied by behaviors or by not stating disapproval. For instance, if someone attempts to take a picture with a smartphone, seemingly posing for the picture or simply ignoring the picture-taking behavior could both mean that they approve of having their picture taken. Since gratuitous consent is often not given in writing, it is easy for individuals to revoke it before any actual invasion has been completed.

Against Freedom of Expression. When the freedom of expression and the right to privacy is concerned, it often ends up being a compromise between the two (Prosser 1960). Generally, in the U.S., the right to know and public interest is heavily weighted against privacy and personal harm. The right to express, especially for the media, is greatly protected by the First Amendment that it places a heavy burden on the states and the courts in attempting to restrict any information that is meant to be used for expression. The limited instances when restriction is made against expressing are often limited to things that are undeserving of protection—such as

obscene materials and child pornography, threatening and fighting words, incitement, and fraud (Ambrose 2013). However, the U.S. Supreme Court has put a halt on abusing Freedom of Information Act to gain information from government agencies that are otherwise difficult to acquire [e.g., *U.S. DOJ v. Reporters Comm. for Free Press* (1989)]. The Court has ruled that not all information that has been complied by the government is subject to Freedom of Information Act, because if the information was truly freely accessible, then anyone who wishes to view it would not have to invoke the Freedom of Information Act in the first place.

One factor often considered for weighing between the freedom of expression and the right to privacy is time (Ambrose 2013; Korenhof et al. 2014). When information is constantly accumulated, as Internet "records everything and forgets nothing" (Rosen 2012, p. 89), information on a subject (e.g., a person) may contradict itself at some point—often new information contradicting with old information. For instance, a person may have been a delinquent who was always in trouble with the law enforcement, but he eventually ages out to be a conforming citizen of society. He may have some arrest records or complaint formally submitted as a juvenile, while he has been volunteering to help out troubled teenagers. He is the same person, but he has changed his thoughts and behaviors over time. The problem with the accumulation of information is that someone can retrieve outdated information (as a delinquent juvenile) from somewhere to use it with malicious intent. Public figures, such as politician or celebrity, are often the victim of these types of harassment from tabloids—and sometimes haters—digging such information to discredit them. Then, it may be in the best interest of the potential victim—even possibly in the interest of the public—to allow them to request an erasure of past private information that is no longer relevant to them.

We have seen that when these harassments occur to juveniles, it sometimes can have dramatic consequences, such as its leading victims to suicide. As mentioned earlier, juveniles use SNS as one of the main tools to communicate with their friends—even with those that they meet in person at school on a regular basis. They will often post pictures, leave comments to friends' posts, and so will their friends. The content that gets posted is not always pleasant; sometimes embarrassing content will be posted for amusement among friends. However, a problem arises when this content is abused for harassment or bullying, like in the case of G.R. (see above). Then that juvenile is left on his or her own to endure embarrassing content open to anyone online. The audience of such content is not limited to friends and peers; it can and will expand to others such as university administrators and HR personnel where these people will apply for as they live their lives. When these administrators and personnel do simple searches or look up SNS to learn more about applicants, they will likely form some opinion about them that may or may not work in the best interest of the applicants. Or one could already have started a career when the embarrassing contents are discovered or revealed, similar to the local television anchor who had resigned from the position because of her wet t-shirt contest photo and video that were published and spread on the Internet (ABC 2004). For the anchor, the content was fairly new—she participated in the contest

1 year before the revelation. But should it have the same impact on someone's reputation if such even took place 10 years ago or 20, for instance, while she was a freshman in college?

Courts' Responses on Privacy Matters from the EU and U.S.

As discussed above, protecting individuals' personal information in the EU was first put into legislation in 1995 for the purpose of protecting online personal information (i.e., Data Protection Directive). However, a case that had been referred to the Courts of Justice of European Union in 2010 and ruled in 2012 had triggered the need to update the Directive to match the current digital age. Reviewing this case is important to understand what the main issue was and why it became the cornerstone for the proposed statute. The discussion then leads to an analysis of the U.S. counterpart, of how the U.S. Supreme Court decided key cases regarding informational privacy even before the digital age.

In Europe

In 2010, a resident in Spain filed a complaint against La Vanguardia Ediciones SL (La Vanguardia), a newspaper company that operates largely in Spain, and against Google Spain when he learned that a Google search with his name reveals two La Vanguardia articles from January and March 1998. In both articles, his name is mentioned in an announcement of a real-estate auction to recover social security debt. The complainant argued that such incident had occurred long ago and that it was no longer relevant, requesting the removal or concealment of those pages against La Vanguardia and the removal or conceal from search results against Google Spain. The complaint against La Vanguardia was rejected because of the necessity of the announcement when the event had taken place; however, the one against Google Spain was not rejected because "operators of search engines are subject to data protection legislation" since they act as intermediaries of information. Google Spain and Google Inc. brought actions against the decision to Spain's Audiencia Nacional (National High Court) and the High Court referred the case to Court of Justice of the European Union (CJEU). The main issues of the case were (1) whether the EU's data protection directive (Directive 95/46) applied to search engines, such as Google; (2) whether Directive 95/46 applied to companies like Google, which do not hold data processing servers in European nations; and (3) whether an individual has the right to request their personal data be removed from accessibility through a search engine.

The first issue in this case is regarding the territorial application of Directive 95/46, which is laid out in Article 4 (1) (a): "the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State." Regarding this issue, CJEU concluded that the Directive applies to any search engines that set up a branch or subsidiary within the EU's member states with the intention "to promote and sell advertising space offered by that engine and which orientates its activity towards the inhabitants of that Member State." The second issue is whether the activities by search engines is considered to be part of "processing of personal data," defined in Article 2 (b) of Directive 95/46. Article 21 (b) states that "'processing of personal data' ('processing') shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction." In regard to this issue, CJEU decided that the activities of search engine of finding, indexing, storing, and making available to its users information that are published online are considered to be "processing of personal data" of Article 2 (b). Moreover, against Google's argument that the request to remove information should be directed to websites that have the information published, CJEU concluded that search engine operators are also obligated to remove any requested information from the result list displayed from a search. The reason is that the result of a search conducted on search engine is more invasive than other websites that have such information published since anyone can retrieve information by a quick search. When a search is done using an individual's name and any information that should be erased or hidden is retrieved via that search, it is a violation of the fundamental right to privacy of that individual. Finally, the last issue is on the scope of the right to ask for removal of personal information, pertaining to Article 12 (b) of Directive 95/46. The Court stated that the information subject to the request of removal should be ones that are "inaccurate … inadequate, irrelevant, or excessive in relation to the purposes of the processing" of information. And the Court seems to say that these standards are related mostly to the age of the data. If it is old information—one that could have been true when it first came about, but has been changed since then—then, unless there is some good reason to keep such information [i.e., "historical, statistical, or scientific purpose" (*Directive 95/46 EC*, 1995 Article 6 (1) (e))], they are subject to the request of erasure.

In the U.S.

The courts in the U.S. have generally found in favor of the freedom of expression over the right to privacy. Particularly, when the information is public information, such as criminal records, the media is free to report using any information pertaining to the individuals that are involved in the case. In *Cox Broadcasting v. Cohn* (1975), the Court concluded, against the claims of the deceased rape victim's father,

that "the interests in privacy fade when the information involved already appears on the public record" (Cox Broadcasting v. Cohn 1975, pp. 494–495). The Court reinforced this decision by stating that states may not impose any type of punishment to media company for publication of accurate information about crime, which were obtained from public judicial records. The Court tended to not differ much when the information published is not public.

Smith v. Daily Mail Publishing Co. (1979). The main issue in *Daily Mail* is whether the state can punish a news media company for using personal information of juvenile offenders that has been obtained by legitimate sources. The case involves the news media reporting a murder case, in which the suspect arrested for the incident was a juvenile. They were able to acquire his name by monitoring the police band radio frequency and by asking witnesses and officers. So, when they went to publish the article, they included the name and picture of the accused juvenile offender. However, doing so is a misdemeanor offense according to the state statute, W. Va. Code §49-7-3, which states that "nor shall the name of any child, in connection with any proceedings under this chapter, be published in any newspaper without a written order of the court." After Daily Mail was indicted in violation of W. Va. Code §49-7-3, they filed a petition arguing that they were indicted based on a statute that violated the First and Fourteenth Amendment. The West Virginia Supreme Court of Appeals held that "the statute abridged the freedom of press" (Smith v. Daily Mail Publishing Co. 1979, p. 100). When the U.S. Supreme Court granted *certiorari*, the petitioner argued that the statute is constitutional because there is an interest of the State in protecting the identity of juveniles. However, Supreme Court affirmed the W. Va. Supreme Court of Appeals saying that "if a newspaper lawfully obtains truthful information about a matter of public significance, then state officials may not constitutionally punish publication of the information absent a need to further a state interest of the highest order" (Smith v. Daily Mail Publishing Co. 1979, p. 103) and that "[t] he asserted state interest cannot justify the statute's imposition of criminal sanctions on this type of publication" (Smith v. Daily Mail Publishing Co. 1979, p. 106).

Florida Star v. B.J.F., 491 U.S. 524 (1989). The main issue in this case is whether there is an invasion of privacy when information is truthfully reported from public records. *Florida Star*, also a newspaper publisher, had a section in their paper where they loaded brief summaries of crime that occurred in the local area. One day, B.J. F. reported to the Sheriff's Department that she was robbed and sexually assaulted and the Department made a report, including her full name. A trainee reporter of the *Star*, who had access to the Department's pressroom and reports in the room, copied the report, including her full name, which was used in the section of the newspaper. This was in direct violation of the company policy and also the Florida Statute §794.03. The district court had found *Star* negligent by violating the Florida Statute while rejecting *Star*'s motion to dismiss based on the argument that Florida Statute §794.03 violated the First Amendment. The verdict was upheld in the appellate court. However, the U.S. Supreme Court reversed the verdict. They conclude that the First Amendment protects publication of information on crime

victims, given that the information is legally obtained. The Court ruled that, to punish a newspaper for violating privacy, "punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order" (Florida Star v. B.J.F. 1989, p. 541).

U.S. Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749 (1989). Reporters Comm. for Freedom of Press and a CBS news correspondent made a request to the FBI for criminal records on four members of organized criminals under the Freedom of Information Act. The FBI provided the records for three of the four members after their death, but not for the last member. Respondents (CBS correspondent and Reporters Comm. for Freedom of Press) argued that records of financial crime were potentially matters of public interest, whereas the FBI claimed that they had no financial crime for the fourth person, but they also did not say whether they had nonfinancial crime records. The district court found that criminal records compiled by FBI is subject to protection against releasing to the public and that the disclosure of such information is considered an invasion of privacy. The court of appeals reversed the decisions of the district court, saying that criminal history records are public records that should be made available to the public. Yet, the Supreme Court reversed the court of appeals decisions. The Court states that, just because the government has compiled any information, it does not make government-held information to be subject to public access. If the information compiled by the government agencies were in fact "freely available" there would not be the need to file for Freedom of Information Act to access such information. The Court also reasoned that federal law, 28 U.S.C. §534 (b), states that "exchange of records and information … is subject to cancellation if dissemination is made outside the receiving departments or related agencies," supporting that the records and information are not free for distribution to public.

Reforms in the EU Proposal and Possible Reform for the U.S.

The proposal by the European Commission has expanded and specified more detailed about what qualifies for the right to be forgotten. Among these details are four major changes to the current Data Protection Directive. First, the proposal includes any websites that operate in the European Union nations to comply with the information erasure requests, regardless of where their server is located. This is important because the Directive would not be operative the way it should if only websites with servers located within the Union were to be regulated. As we can see with the Google case, the server for the Google search engine is outside the territory of the Union. However, Google operates in Europe by supplying localized advertisement to the European users, meaning they are using the location information of the users to track where they are and provide them with advertisements and

information that pertains to their daily life. Second, the proposal places the burden of proof on website operators to argue why they need to keep the information on their websites. This makes sense in a way that if it is the right of the individual to ask to remove his or her personal information, they should not have to argue about why they need the information erased. Instead, the controllers and operators of websites must explain to individuals why they cannot erase the said information against their request. The third element of the proposal is to include punishment for not complying with the request, which strengthens the right of the individuals. The proposal states that controllers and operators that do not provide mechanisms for request or fail to promptly respond to requests can be fined "up to 0.5 % of its annual worldwide turnover" (Article 79 4 (a) of the Proposal for data protection Regulation). Finally, the proposal specifies the possible reasons for when controllers are unable to comply with the request to erase any information. These reasons—for exercising freedom of expression, for public interest in public health, for historical, statistical, and scientific purposes, for compliance with legal obligations, and when controllers can restrict instead of erase information—lay out the range of activities that allows controllers to keep information available on their websites, which they must make an argument for.

With the contents of the EU's proposal in mind, some issues must be addressed to discuss how the right to be forgotten can be implemented into the U.S.—and possibly to other countries. These issues relate to erasure, particularly what constitutes erasure, what could be requested for erasure, and its scope.

Information that Can Be Requested for Erasure

A primary issue to consider is what information can be requested for erasure. Among many ways to classify information, it is necessary to classify information based on who had posted it because responding to erasure requests may have to be treated differently based on this information. Hence, information may be classified into three types: information posted by the requester; information initially posted by the requester then re-posted by someone else; and information initially posted by someone else (Fleischer 2011; Rosen 2012). The first type is the least controversial as anybody who posts something on a website should have the right to erase their own post.

The second type of information is a post that has been reposted by third-party. This type may contain some controversy. *G. R.* incident is probably a close example of this type. Although he did not post it to any website or show it to anyone, he made the video clip himself and leaving it in school for anyone who stumbles upon it to handle it. The video was shared by schoolmates and eventually got posted online. If *G. R.* was to request the erasure of the video, where would he make such request—Facebook, YouTube, Google, Yahoo? It might be easier for websites like

Facebook and YouTube to comply by conducting a simple search on their server and removing any copies found. For search engines such as Google and Yahoo, it may be more complicated as they are merely producing a list of search results that stem from the keywords and the majority of results are actually saved on servers of other websites. So, the best possible response for search engines might be to block the requested content. Yet, this still contains an issue of the blocked content remaining in the server. To avoid such problem, another possible response for search engines is to notify the websites holding contents that there has been a request to remove the content.

Finally, the last type is information originally posted by a third-party. Even with this type of information, according to the EU proposal, the individual can request erasure of the content and the websites and the third-party who produced the content must prove that there is a good reason to keep the content. However, this type of information is the most controversial to deal with because one person is asking for controllers to remove (or block) information that is posted by someone else while he or she is the subject of that information. It is difficult to distinguish who holds the ownership of the information between the producer and the subject. Consequently, it could work against honest third-party producers of information who may have to face the burden of proving any actual historical, statistical, and scientific purposes on contents they produced, restricting their freedom of expression.

What Is Erasure?

Another issue to consider about the right to be forgotten is what to consider as an erasure or "to be forgotten." Would it have to be a complete removal from the server or could it be just a removal from public view? An immediate response would be to erase the information completely from website servers. One may be quick to ask "what about information that has been reposted?" If the information is reposted on the same website, it is plain and simple. As controller of the website, they have access to both the original post and the repost, allowing the erasure of both. The only additional measure needed would be to notify the person who made the repost that the information is being deleted due to a legitimate request made by the original poster. When the information has been reposted on a different website, it gets out of their hands. It is nearly impossible to know where the information was reposted, and even if they were able to track it, they do not have the authority to erase information from other website servers. Either the website that received the request or the individual making the request would have to again request the erasure to that website. Theoretically speaking, if the information was reposted to hundred different websites, for example, hundred different requests would have to be made in order to remove the information completely from the Internet. This is likely to be

the case also when an individual finds information after a search conducted on a search engine, similar to the Google Spain case.

An alternate response, which might be more plausible, is to remove contents only from public view. When search engines track reposts of contents on other websites for the purpose of removing information from servers, they may possibly intrude upon the operation of other websites. Also it places a huge burden on search engines to go through all websites that operate in the Internet. There are nearly 1 billion websites that currently operate on the Internet, with several websites launching and closing per minute throughout the world ("Total Number of Websites" 2015). The biggest issue with this response is that it keeps the information on servers, which can again be accessed and made public (e.g., physically copied onto thumb drive at the server site). With the Internet, however, we have to accept that we cannot expect to completely remove information from existence after it has made its way onto the Internet. We have to accept that there will be a copy of information stored somewhere by someone. Consider it similar to your friends remembering something you have done in the past. It may be stored on a super computer that acts as the server for company like Google and Facebook; or it could be stored in a friend's computer hard drive. As long as it is not easily accessible to unspecified individuals by a simple strokes of words, we have to accept that, whether we like it or not, there will be traces of embarrassing information that are still part of us.

Scope of Erasure

One last issue to consider for the right to be forgotten is the scope of information that individuals could ask to erase. It is impossible to simply forget every embarrassing incident that took place in our lives—it might haunt us since there is always someone who knows about it or something that will constantly remind us of it. The purpose of the right to be forgotten cannot be to remove all embarrassing past. Even if all contents can be erased completely from the Internet, there will still be someone who remembers the incident and nothing can be done about it. However, it can work to relieve people from some of the bad decisions that they may have made while they were so-called young and restless. The period of adolescence is a particularly sensitive time for any person since their brain and their mental capacity are not fully developed. In some sense, they are able to perform as well as any adult would but, in other aspects, they have trouble behaving as society expects them to do. Especially, their cognitive skills are easily to be influenced by emotions, meaning that they think that they are doing something correct or they are certain that they want to say something, only to regret having done so after the fact when the emotions have faded away (Steinberg 2005).

In the context of posting something online, adolescents may think that they are posting something very funny that they want to share with their friends, but they may later realize that it is humiliating and want to remove it. However, when their

friends repost it or copy to some other websites, the matter becomes larger than simply removing the original post. The regret that comes to them later is the reason why they need guidance and protection and it has always been that either the parents took on that role or the State has done so in *parens patriae*. As the Court has recognized in *Lawrence v. Texas* (2003), discrimination based on moral disapproval is generally unacceptable, but the whole idea behind protecting youth and having a separate legal system for juvenile offenders is based on such moral grounds. Although much has been dismissed, with youth frequently being prosecuted and convicted as adult, the legal system and society still accepts that youth have diminished rights and responsibilities when it comes to their legal status (Levesque 2014). So, for some minor crimes and delinquent behaviors, rehabilitative treatments rather than punitive ones are given to youth.

The need for greater protection for youth by the state is found in some of the legislation that was enacted and took effect in the U.S. or legislation that is in the process of being enacted—despite some criticisms against them (see Szoka and Thierer 2009 for an extensive review)—such as Children's Online Privacy Protection Act of 1998 and the subsequent Do Not Track Kids Act of 2013, and California's Privacy Rights for California Minors in the Digital World Act. Simply put, the purpose of these statutes is to protect youth and their personal information from the aggressive business activities of collecting, using, and disclosing them for financial gains. In fact, this entire area of law focuses on the need to protect youth from information (see Levesque 2007). Although this is a little different protection than what the right to be forgotten is aiming to protect, it can be a starting point where the state recognizes the vulnerability of youth in online settings. This may be not only for the youth, but also for adults who might have done some regrettable acts while they were young.

Conclusion

Advances in digital technology and telecommunication have brought significant changes on how people live their daily lives, more so for the younger generation. They are faced with more intrusive invasions of their privacy as their daily activities involve online activities. They communicate and interact with each other using SNS and other communication services, browse through merchandise and place orders on shopping sites, search for information needed for their homework, and enjoy their free time listening to music and watching movies. While many services and information provided are from website operators, more and more information is now user-generated content. The atmosphere of online activities now requires people to pitch in by placing contents online themselves to fully interact with other people.

For youth, submitted contents are often blurbs and images from their daily life activities. As it has become the norm for people to share where they are, what they are doing, what they are eating, who they are with, and so on, they are basically

stripping themselves of privacy. Some people argue that they should have thought about what they were doing before they posted online. However, one thing to consider is that these are not simply behaviors by choice; they are expected behaviors for participating in the digital age. For instance, when a couple has a baby, their friends and acquaintances expect to hear about the birth of the baby as soon as possible. So, the new parents write on their SNS accounts as soon as the baby is born, with a picture of the newborn baby. SNS makes it convenient for people to announce news to peers and for friends to hear the news as early as possible. This is how disclosure of information occurs. Those who do not use SNS tend to fall behind on the most up to date information of others around them. And they fail to contribute to that discussion. Yet, when people easily post their contents online, they do not necessarily consider the possible harm of having their information kept outside of their own reach.

The *G.R.* example discussed in the beginning of this chapter is a good example of harm caused by personal information having been made public and out of the person's reach. Another example of having failed to be cautious with private information that recently became a major social problem today is what is called "revenge porn." Revenge porn involves intimate images that either people took themselves then shared to their romantic partners or their partners have taken, which later became publicly released. As these images are very sexually explicit, they can be detrimental to the victims when made public, especially for the female victims. Revenge porn has become an important social problem and even legal responses are beginning to emerge on this matter. Fortunately, Google has committed to honor individuals' requests to remove nude or sexually explicit images shared without their consent from Google Search results (Murphy 2015).

Google's decision to take action against revenge porn could be the breakthrough for the discussion of recognizing the right to be forgotten. As the world's leading portal website, Google was able to consider the potential harm of certain publicly available personal information. However, efforts to protect individuals should be a collective one and not from a single company. It is so easy to make any personal information public—it only takes a few clicks. On the contrary, it is nearly impossible to retract information open to the public back to privacy. Since individuals are not able to recover the privacy of their own information, support from the public domain—the state—is necessary. When a youth is harassed and bullied by known and unknown people from the Internet and there is no way for the youth to protect themselves, the state should step up to protect them. So, the right to be forgotten should be a positive right of individuals, a right that requires the government to actively protect its citizens.

So far, the response from the United States has been that the right to be forgotten violates the freedom of expression stated in the First Amendment. However, also as important, yet often neglected, is the right to privacy. When the Constitution and the Amendments were enacted, current Internet privacy issues were not a concern because individual privacy has been the norm, which continued until recently. The very first time a concern about privacy was raised was with the development of photography technologies. That discussion of the right to privacy started a wave of

lawsuits and legislative responses to protect at least the minimum amount of violation of privacy. Even if it were not warranted in a federal statute to protect privacy, a significant number of States have accepted the possible intrusion of privacy (Prosser 1960). The right to be forgotten is very similar to the right to privacy and it may not be a stretch to consider it a matter of privacy. Then, it should be much easier to understand the need to protect people and their personal information after it has been made public. It should not matter whether individuals themselves revealed information to the public or someone else did. Personal information is still personal and people should have the right to say it should be shared with others or be kept private. Therefore, rather than outrightly rejecting the right to be forgotten because it seems to contradict the freedom of expression, it may be necessary to consider having both and have a balance between them. That way people can be assured that they can be judgment-free from the past that is no longer relevant to the current and future self, even if the past that they regret might not be fully forgotten (e.g., people still remember or people have a copy saved on their computer), it would not be publicly viewable from online search so.

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