

INTERNATIONAL BUSINESS

Right to Be Forgotten? Not That Easy

By DANNY HAKIM MAY 29, 2014

LONDON — Eoin McKeogh knows how hard it can be to make the Internet forget.

He started waging a court battle against the likes of Google, Facebook and Yahoo after a Dublin cabdriver posted a video in 2011 that showed someone who looked like him — but wasn't — bailing on his cab fare. Mr. McKeogh, a university student who was in Japan at the time, was pilloried on the Internet after an anonymous user falsely named him as the fare dodger.

While the original video was taken down long ago, Mr. McKeogh continues to fight in court to expunge the digital trail. He is among the thousands of Europeans trying to erase their online histories.

In France, a mother recently sought to remove photos of her scantily clad teenage daughter from a website. In Romania, a woman tried to curtail online access to records of her divorce. In Britain, a former politician wanted to delete Google links to a book he viewed as defamatory toward him.

Such efforts have accelerated after a landmark decision by the European high court this month that will require Google and other search providers to consider individuals' requests to remove links that they say infringe on their privacy.

In the first few days after the ruling, about 1,000 Europeans asked Google to

take down links, with about half having criminal convictions and half not, according to people briefed on the requests. The requests included an actor seeking to expunge links to articles about an affair with an underage girl and a doctor seeking to take down negative reviews.

Search companies will face a considerable challenge in responding to the requests. Google alone handled more than 23 million requests in the last month to remove links to copyrighted material around the world. But much of those efforts are automated and address straightforward issues like taking down a link to a stolen movie.

Dealing with individuals who bring complaints in Europe promises to be more complex because it would most likely require additional employees to grapple with less clear-cut decisions. Google now has a web form for Europeans to request that links be removed. The company also said it plans to create an advisory committee to “cultivate a public conversation about these issues.”

While the ruling appears to newly enshrine a “right to be forgotten,” Europe has long taken an aggressive stance on individual rights in the digital age. Each nation in the European Union already has a data protection agency through which citizens can appeal for help in erasing their online histories.

The court decision stems from a case brought by a Spaniard, Mario Costeja González, who was concerned about the prominence given by Google to a short newspaper notice from the 1990s about a house he owned being sold off to pay debts. “I was never worried about my online image, I was worried about the impact on my work,” Mr. Costeja González, a lawyer, said in a brief interview. “I have always been in favor of freedom of expression.”

But the tech industry has portrayed the decision as a blow against the free flow of information on the web and a victory for those who want to cover up past misdeeds — including pedophiles, corrupt politicians and unscrupulous businesspeople.

“A simple way of understanding what happened here is that you have a collision between a right to be forgotten and a right to know. From Google’s perspective that’s

a balance,” Eric Schmidt, Google’s executive chairman, said in recent comments on the decision. “Google believes, having looked at the decision, which is binding, that the balance that was struck was wrong.”

Historically, many requests have been aimed at blocking wider access to what many would view as part of the public domain.

Indaco Systems, a Romanian company, operates a website that publishes Romanian court proceedings, which are released by the government. The company has received hundreds of complaints this year from citizens who are concerned about public access to court filings that involve them. Many of the complaints are spurred by Google links leading to the case records.

Adrian Nicolaide, a lawyer for Indaco, said “the information is either public — and in this case anyone should have access to it — or it is not public, and the public should have no free access.”

“Google indexing official public information leads that information to a whole new level of publicity, but it does not infringe the very purpose of public information,” he added.

The ruling also reflects the historically divergent views on privacy between the United States and Europe, and it comes alongside deep mistrust of American technology spurred by the revelations about the United States government’s mass surveillance practices.

The court ruling “echoes what we identify as a social trend, which is the will of the individuals to master their online life,” said Isabelle Falque-Pierrotin, the chairwoman of the French data protection agency. Her agency is already taking in about 2,000 complaints a year from people who want Internet content or links taken down, she said.

She said the recent ruling was almost immediately cited in complaints coming into her agency.

“It’s much too early to say it’s going to lead to an automatic increase, but I was surprised that within 24 hours some people who were complaining were mentioning

this court ruling,” she said. “Lawyers are very efficient.”

Once a contested item is online, however, the genie will not easily go back in the bottle.

In Mr. McKeogh’s case, an Irish judge indicated the taxi video could still be found, and compelled the technology companies to take steps to remove “tags, threads and other means by which the material remains accessible and viewable.”

“All manner of nasty and seemingly idle minds got to work on the plaintiff, and as seems to happen with apparent impunity nowadays on social media sites, said whatever things first came into their vacant, idle and meddlesome heads,” Judge Michael Peart of Dublin wrote last year, when he granted Mr. McKeogh an injunction in a case.

Mr. McKeogh’s lawyer declined requests for comment, citing the litigation. The case is now being considered by the Irish Supreme Court.

Judge Peart, in one of his rulings, noted the complexities of Mr. McKeogh’s quest. “This court does not have a magic wand,” he wrote. “The damage has already been done, and it is impossible to ‘unring’ the bell that has sounded so loudly.”

Europeans have a long history of trying to reclaim their privacy.

Consider the case of Alexandre Dumas. In 1867, Dumas, the 65-year-old French author of “The Count of Monte Cristo,” posed for a series of what were seen as racy pictures with Adah Menken, a much younger American actress who was rumored to be his mistress. She posed in her underwear in some of the photos and cuddled with Dumas in others. A scandal followed when some of the pictures were published, and Dumas went to the French courts to try to get them back.

“Privacy is deeply connected with the protection of personal honor in Europe,” said James Q. Whitman, a Yale law professor who wrote a detailed study contrasting European and American privacy policies.

“The European understanding is that public dissemination of embarrassing facts about one’s past could undermine one’s sense of honor and standing in

society,” he added. “American privacy law isn’t really dedicated in the same way to protecting personal honor or social standing.”

In 1867, the French courts ruled that a “right to privacy” superseded the photographer’s property rights, and ordered the photos be sold back to Dumas. Still, some of them can be seen today. On the Internet.

Mark Scott contributed reporting.

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