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RECONSIDERING THE “RIGHT TO BE FORGOTTEN” - MEMORY RIGHTS AND THE RIGHT TO MEMORY IN THE NEW MEDIA ERA

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ABSTRACT

In May 2014, the European Union Court of Justice established a “right to be forgotten” while declaring that “[An] operator of a search engine is obliged to remove from the list of results displayed [...] links to web pages, published by third parties and containing information relating to [a] person.” Since then one can witness a worldwide public discussion that frames this right as a clash between two prominent liberal rights: the right to privacy and freedom of expression.

However, the right to be forgotten cannot be reduced into a conversation about liberal rights and freedoms. After all, the right to be forgotten, at least partly, recognized the right of the individual to control the public representation of the narrative of his or her life in the new media era. As such, more than about liberal rights, the right to be forgotten should be understood as part of a larger debate about a right to memory. This study seeks to reconsider and analyze the right to be forgotten using tools from collective memory discipline, which have gained prominence in the social sciences.

First, this study criticizes the rights’ focus on forgetting, as memory processes are always about both forgetting and remembering. Second, this study problematizes the fact that the right to be forgotten can be only materialized by individuals, while in fact, memory is a phenomenon shared by both individuals and collectives, and there are mutual influences between individuals and collectives when forming a society’s collective memory. Third, this study highlights the fact that the process of materializing the right to be forgotten, has established Google as one of the prominent memory agents in our hyper-connected society, while in fact, giant corporations’ commodification of memory should be critically analyzed and memory rights are supposed to oppose this trend and not favor it.

To conclude, this study calls to capitalize the opportunity created by the implementation of the right to be forgotten, which enabled to merge collective memory discourse and human rights discourse, and suggest replacing the term “right to be forgotten” with a larger right that includes both remembering, forgetting, being remembered and being forgotten, and enables both individuals and collectives to enjoy it’s protection – a right to memory. This study suggests that the right to memory is the right of individuals and collectives to be remembered and forgotten if needed; to be able to construct and reconstruct collective memories; to have the potential to capitalize on new memory tools, based on new media’s unique capabilities; to gain access to archives; to be able to archive mnemonic artifacts; and to have the opportunity to endow unique memories to next generations without prohibitions from dominant political and social agencies. This extended right, placed independently within basic human rights will serve the memory needs of our mediated era.

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INTRODUCTION

Mario Costeja Gonzalez, a Spanish citizen, accumulated social security debts in 1998 that resulted in his bankruptcy and in an auctioning of his real-estate belongings. The widely circulated newspaper “La-Vanguardia” published the official announcement of the auction at the time and a link to the announcement made available on the newspaper’s website at the time is still accessible to any Internet user initiating a search for Mr. Gonzalez’s name. 12 years later, on March, 2010, Gonzalez lodged a complaint with the Spanish Agency of Data Protection (AEPD) against “La – Vanguardia”’s publisher, Google Spain and Google Inc. Costeja demanded that the newspaper “will be required either to remove or alter those pages so that personal data relating to him no longer appeared [...]” (Court Judgment, Paragraph 15) , and that Google will “be required to remove or conceal the personal data relating to him so that they ceased to be included in the search results and no longer appeared in the links [...]” (Ibid). Costeja’s debts, he claimed, were now “entirely irrelevant.”

The AEPD denied Costeja’s requests regarding the publication in the newspaper as it was legally justified to publish the information has back in 1998. However, it did accept Costeja’s demand from Google claiming that “operators of search engines are subject to data protection legislation given that they carry out data processing for which they are responsible and act as intermediaries in the information society.” (Court Judgment, Paragraph 17). In response, both Google Spain and Google Inc. petitioned the Spanish National High Court. The Court asked for the intervention of the Court of Justice of the European Union (CJEU) in the case, and indeed, on May 13th, 2014, after a long process of deliberation, the court decided that an:

Operator of a search engine is obliged to remove from the list of results displayed following a search made on the basis of a person’s name links to web pages, published by third parties and containing information relating to that person, also in a case where that name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful. (Decision 3)

And that:

The data subject may, in the light of his fundamental rights [...] request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name. (Decision 4)

By making these decisions, the CJEU established officially what has been widely referred to since as “the right to be forgotten” (RTBF). In this paper we will discuss the legal origin of the right. The right, we believe, is broader than a right “to be forgotten,” as it is actually about constructing one’s narrative. We will place it therefore within the field of memory studies and critique its emphasis on forgetting, as memory is about both forgetting and remembering. We will then further critique the right’s focus on individuals, as memory, even individual memory, is the amalgamation of both individuals' and collectives' sense of the past. We will conclude by suggesting placing the right to be forgotten within a larger right that calls for recognition – a right to memory.

THE LEGAL ORIGIN OF THE RIGHT TO BE FORGOTTEN

As explained in the court judgment itself, the right to be forgotten is not a totally new right. Its intellectual roots can be found in the French “right of oblivion” (Rosen, 2012). More specifically, the right to be forgotten is an extension of Article 12(b) and Article 14(a) of the European Data Protection Directive 95/46. Article 12(b) on the “Right to Access” approves the “rectification, erasure or blocking of data [...] because of the incomplete or inaccurate nature of the data.” Article 14(a) establishes the data subject’s “Right to Object” that obliges member states to grant the data subject the right to “object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation. Where there is a justified objection, the processing instigated by the controller may no longer involve those data.”

The question the court was facing, therefore, was whether these Articles can be extended in a way that will enable a data subject

“To address himself to search engines in order to prevent indexing of the information relating to him personally, published by third parties’ web pages, invoking his wish that such information should not be known to Internet users when he considers that it might be prejudicial to him or he wished to be consigned

to oblivion, even though the information in question has been lawfully published by third parties.” (Court Judgment, paragraph 20)

Indeed, after declaring that Google, or any other search engine, can be classified as “controller” of data, the court decided that the answer to this question is affirmative.

However, the court decided that the right to be forgotten is not a fundamental right, but rather that it has clear limits and there will be cases in which the interest of the general public will supersede the rights of the data subject. For example, when the data subject plays a role in public life (Court Judgment, Decision 4). By calling for a case-to-case balancing test, the court established a wider debate – a debate between privacy rights and expression rights (Garcia – Murillo & MacInnes, 2014).

The court decision led to an active debate in the media. Many influential commentators framed the court decision as a clash between two competing rights – the right for privacy and freedom of expression. Jonathan Zittrain, a Harvard Law professor, wrote in the New-York Times that the Court’s ruling is “a form of censorship, one that would most likely be unconstitutional if attempted in the United States.” (Zittrain, 2014) Similarly, Jeff Jarvis, a professor at the City University of New York, and a popular blogger, wrote that the RTBF is “the most troubling event for speech, the web and Europe.” (Jarvis, 2014) Henry Farrell of George Washington University wrote in his column in the Washington post that the decision would have “a serious impact on EU-U.S relations.” (Farrell, 2014)

The balance between these rights was also at the center of both the “Article 29 Data Protection Working Party”’s “Guidelines on the Implementation of the Court of Justice of the European Union Judgment on Google Spain and Inc. V. AEPD and Mario Costeja Gonzalez” published on November 26th, 2014, and “The Advisory Council to Google on The Right to be Forgotten” final report published on February 6th, 2015.

The official European Working Party suggested 13 criteria in order to define whether a data subject’s privacy rights outweighed in specific cases other interests, such as expression rights. Among these criteria one can find questions such as the role played by the data subject in public life, the accuracy of the data, and the relevance of the data. Google’s Advisory Council, on the other hand, suggested other criteria among them the nature of the information and its source. In addition, they outlined different types of information that had a “bias toward public interest.”

However, both reports stated that the right to be forgotten should not be interpreted as breaching on expression rights. While referring to the RTBF as de-listing results from a search made on a person’s name,

the Working Party claimed that “the impact of the de-listing on individuals’ rights to freedom of expression and access to information will prove to be very limited.” (p.2) Similarly, Google’s committee declared that “the ruling [...] should not be interpreted as a legitimization for practices of censorship of past information and limiting the right to access information.” (p.6)

Hence, if the right to be forgotten is not about the fair balance between privacy rights and expression rights when dealing with personal information over the web, and if, as declared by Google’s committee, the court did not at all establish “a general right to be forgotten,” (p.3) since it “only affects the results obtained from searches made on the basis of a person’s name and does not require deletion of the link from the indexes of the search engine altogether. (Working Party Guidelines, p.2), then one should ask what is the “right to be forgotten” really about?

The RTBF is in fact the right of the individual to control and construct his or her public narrative as well as the public representation of his or her life story in the digital era. Indeed, as declared by the court decision itself,

The organization and aggregation of information published on the internet that are effected by search engines with the aim of facilitating their users’ access to that information may, when users carry out their search on the basis of an individual’s name, result in them obtaining through the list of results a structured overview of the information relating to that individual that can be found on the internet enabling them to establish a more or less detailed profile of the data subject. (Court decision, paragraph. 10)

As such, this study suggests that the right to be forgotten is not only about the rights of individuals as “data subjects,” a term widely used in the Court decision but rather that it is about the rights of the individuals as storytelling animals, using MacIntyre’s (1984) term. Indeed, we tell others stories about ourselves, based on memories derived from our experiences. Combining these stories together we create a narrative of our life. Yet, narratives are constructed, they evolve over time and change constantly. We choose to highlight different life-phases when our life circumstances are changing. Our constructed narratives, based on what we perceive to be our memories, are what others can refer to as our identity. Acknowledging that the right to be forgotten is not really about forgetting, but rather about remembering, about our narratives, and eventually about our identity, this study proposes to reconsider and analyze it using tools derived from memory studies, which have gained prominence in the social sciences in recent years (see: Confino, 1997 and Olick, Vinitzky-seroussi & Levy, 2011). As such, this study critiques the RTBF’s focus on forgetting, as the memory process is always about both forgetting and remembering. Then, this study will

problematizes the fact that the right to be forgotten can be only materialized by individuals, while in fact, memory is a phenomenon shared by both individuals and collectives. Eventually, this study will use the opportunity created by the implementation of the RTBF and suggest replacing it with a larger right, a right to memory, that includes both remembering, forgetting, being remembered and being forgotten, and enables both individuals and collectives to enjoy its protection.

FORGETTING, REMEMBERING AND MEMORY

The so-called "new media" has fundamentally changed the "epistemology of memory" (Reading, 2009), creating a "new memory ecology" (Hoskins, 2011). While traditional mass media outlets have always served as important memory sites, (see: Neiger, Meyers & Zandberg, 2011; Roediger & Wertsch, 2008) new media's unique characteristics and capabilities made mediated memories "less costly, globally connected, and reproducible across different media." (Reading, 2011a, p. 242) Some have termed this as a digital "perfect memory." (Mayer-Schönberger, 2009, p.4) Yet, it also had some unpredicted outcomes. Giant knowing-all search engines, for example, "retain near perfect memory of how each one of us has used them," (Ibid, p.8) and as a result the "balance of remembering and forgetting has become inverted. Committing information to digital memory has become the default, and forgetting the exception," (Ibid, p.196).

Forgetting, however, has always been an element in the establishment of social memory. The Roman policy of "damnatio memoriae" was the "manipulation of memory and posthumous reputation." (Varner, 2001, p. 41) One such practice was beheading statues of leaders and prominent cultural figures who became political opponents and rivals to the leaders of current regime who wished to have them forgotten. A bit later in time, since the 9th century and further on, when old-time rival ethnic groups started to see themselves as partners in the process of nationalizing humanity, it was forgetting that served as a "crucial factor in the creation" of the new homogenous groups, as extreme violence between different tribes, a situation that preceded the establishment of the "nation" as a coherent political unit, had to be forgotten (Renan, 1882 [1992], p.3).

Indeed, forgetting has its merits; however, it is not to the antithesis of memory. In fact, forgetting is in itself a complex social site that contains varied meanings, purposes and uses, as it is "not a unitary phenomenon." (Connerton, 2008 p.59) Both the Romans and the nations created in the long process from the 9th century to the 19th and 20th centuries used diverse practices of forgetting as tools in a much larger process - the process of creating a shared communal memory. In other words, there is no real dichotomy

between forgetting and memory as memory processes contain both the practices of forgetting and remembering. “[F]orgetting is [...] an inescapable element in remembering,” (Vinitzky-Seroussi & Teeger, 2010, p.1107) and they are both part of the larger memory process.

Our memory is a combination of what we remember about our past, what we may have forgotten about it, and what we wish to forget. Indeed, “the ability to remember, to speak of or to commemorate one thing may implicitly be predicated on the ability to keep silent on others.” (Ibid) There are many ways to forget and silence past events. Some practices are connected to trauma; others deal with unpleasant stories, which are not necessarily traumatic; and occasionally people just want to forget who they were in the past in order to start a new life in a different place. Trying to theorize the process, Connerton (2008) suggested seven types of collective mechanisms of forgetting. One such mechanism is “repressive erasure”, which is the deletion, destruction and cultural editing of another’s memory (Reading, 2011b); another is “prescriptive forgetting”, a process of forgetting past events that is “in the interests of all parties to the previous dispute” (Connerton, 2008, p.61). The latter is crucial to any democratic development as it is “essential for the construction and maintenance of national solidarity and identity” (Misztal, 2010, p. 30). Suggest additional mechanisms of forgetting are actually one of memory studies’ greatest tasks (Connerton, 2008).

In the case of the RTBF, what people are actually asking Google to do, is not to merely be forgotten, but rather it is to have the liberty to shape their public memory and to be in charge of both the processes of remembering and forgetting that construct it. De-listing yourself from search results is one, new, practice of forgetting that is part of the general memory process of the digital age. The Court decision and the heated discussion that ensued, which together construct the RTBF’s discourse, seem to overlook the real essence of memory process and to contextualize the debate in its terms.

INDIVIDUALS AND COLLECTIVES’

The right to be forgotten is the extension of existing data subjects’ rights as they are listed in Directive 95/46. Indeed, the primary objective of Directive is to ensure “effective and complete protection of the fundamental rights and freedoms of natural persons.” (Court Decision, Pa. 53) In other words, it is individuals that concern the Directive and it is individuals and individuals only that can materialize the right to be forgotten. In the criteria suggested by both the committee advising Google and by the Working Party of the European Commission, there is no reference to groups and collectives and their right to de-list links to undesirable stories about their past.

However, if we agree that the right to be forgotten is not purely about the rights of data subjects, nor is it only about issues of data protection in the hyper-connected era, but that rather it is about a larger social issue – memory processes in society – then we should focus on both individuals and collectives. Indeed, the relations and interconnections between individuals and collectives “remain a key debate in the field [of memory studies].” (Kligler-Vilenchik, Tsfaty & Meyers, 2014, p. 485) In the past, the term memory has been understood mostly in relation to the individual and his cognition as it was understood as a biological phenomenon (Tirosh & Schejter, 2015). However, memory studies changed that perspective, as person cannot remember in isolation from her social relations. (Halbwachs, 1925/1992) Our private memory, which draws on "our ability to store, recall and reconfigure verbal and non-verbal experiences and information," (Kansteiner, 2002, p.185) will not function in isolation from social frameworks and it "cannot be separated from patterns of perceptions which we have learned from our immediate and wider social environments." (Ibid)

Understanding memory as a social construction, we recognize memory as “the way people construct their sense of past” (Confino 1997, p.1386). It is a ‘sense of past’ because it does not reflect a distinctive and "true" past, rather memory is an "ongoing collaborative re-casting of 'the past' [...] in the present," (Hoskins, 2001, p.336) shared by both individuals and collectives. While individuals store their memory in their brain and use their neurons in order to process it, collectives ‘store’ their memory in social structures - museums, monuments, media, memorials and on the like - and ‘process’, or more accurately, make it available, to different levels of groups, such as communities or nations (Anastasio et al., 2012). In the collective realm, a useful differentiation has been made between “autobiographic” and “historical” memory (Olick & Robbins, 1998) when referring to the relationship between individual and collective memories. The “autobiographic” memory contains the private experiences of subjects who were present at certain events, and the “historical” refers to the collective expression of the past and its translation into a “shared collective knowledge.” (Confino, 1997, p.1386)

Indeed, collective memory consists of both “the mnemonic signifiers found in our surroundings [and] the knowledge and perceptions of individuals in a society regarding its past.” (Kligler-Vilenchik, Tsfaty & Meyers, 2014, p. 485) Yet, there are mutual influences between individuals and collectives while constructing shared memory. In the Israeli case, for example, it has been demonstrated that highly traumatized war veterans memorize their personal war experiences in a way that influences society’s collective memory of the particular war. At the same time, collective representations of the war influence the veterans’ private memories (Lomski-Feder, 1997). As such, we can perceive memory as “the

negotiation of past and present through which we define our individual and collective selves.” (Olick, 2003, p.15) Both individuals and collectives construct their identities while working through and processing their memories (Assmann & Czaplicka, 1995; Schejter, 2009; Zerubavel, 1996).

Nevertheless, the right to be forgotten can only be realized by individuals. While trying to construct a personal narrative and to maintain control over it in the new digital era, an individual has the right to approach a search engine and make it harder for others to construct a different narrative. However, the connections and mutual influences between the individual and the collective, while constructing shared memories, is absent from the definition of the right, as delineated in the court decision, the public debate and the subsequent reports. As a result of these two weaknesses of the RTBF as it is understood today – its divorce from a larger understanding of the concept of memory, and its indifference to the mutuality of individual and collective memories – one should see the RTBF as part of a larger right – a right to memory – and to apply it as such. This extended right will encompass both the individual will “to be forgotten” and collective issues of forgetting and remembering and will take into account a full understanding of the role of memory in both individual and collective processes of identity building and self-determination.

A NEW RIGHT TO MEMORY

Perhaps the biggest contribution of the RTBF to the conversation on the meaning of memory lays in the fact that it enabled a discursial transformation of the field. The RTBF created a new opportunity to talk about memory rights. The discourse about the RTBF proves that it is time to start and speak about “the governance of personal and collective memory” (Pereira, Ghezzi & Vesinc’-Alujevic, 2014, p.3). As memory becomes pervasive in the digital era it is not enough to speak about a limited right of an individual to delist a particular link from a search engine especially when it only emphasizes forgetting and dismisses remembering, and when it is only applicable to individuals. Instead, we should use the opportunity to talk about memory rights in order to evolve “a culture of just memory” (Ricoeur, 1999, p.11). The establishment and implementation of a right to memory is fundamental to the governance of memory in a just way.

Indeed, the connection between memory and justice is not entirely new. A just memory culture will lead, for example, to the recognition of past wrong doings when groups that experienced injustices in the past demand justice and reparations in the present. One such example can be found in the official Australian apology for historically dispossessing Aborigine communities (Misztal, 2010; Misztal, 2005) and in the process of reconciliation in South Africa. In these cases, the past was re-examined in the present in order

to gain a group's recognition and to legitimize the groups' demands. These just memory politics can be affiliated with what was named "politics of regret" (Olick, 2007), a new kind of political culture "concerned with the stains of the past, with self-disclosure, and with ways of re-remembering once taboo and traumatic events" (Misztal, 2005. p.1322).

The connection between memory and the proper function of democracy has also already been discussed. For example, in the establishment of new democracies after the end of the cold war, at the "third wave of democratization," process (Huntington, 1991) the past was present and "adjoining dilemmas of how to address past wrongdoings," (Misztal, 2005, p.1322) influenced democratization processes. Indeed, the new established democracies had to "come to terms with the past" (Adorno, 1986). They had to remember their own unpleasant history; they had to realize what are the current consequences of past atrocities; and they had to value proper functioning democratic institutions that depends on the "self-critical working through the past" (Misztal, 2010, p. 29).

Memory is related to just societies and to the proper functioning of old and new democracies but it is also an integral part of any legal system and it stands at the heart of contemporary human rights regime. Laws instill through their mere power and enforcement tools and through the outcome of their directives "realms of memory" (Nora, 1989) such as "monuments, ceremonies, museums and educational curricula" (Tirosh & Schejter, 2015). More importantly, it is the processes preceding any enacting of a law that give the "opportunity to search for [majority] identity and define it through the selective institutionalization of the 'memories' that serve its cause." (Ibid)

In addition, according to Levy and Sznajder (2014), human rights are based on the remembrance of some and the obliviousness of other historic events. "Memories of human rights abuses and failures to address them", they claim, "have shaped [...] the formation of a universal human rights regime." (p.4) Clearly, the Holocaust, as a "foundational past" of the Western World (Confino, 2012), was the most significant event that shaped what is now referred to as cosmopolitan memory, a memory based on "nation-transcending idioms, spanning territorial and national borders," (Levy & Sznajder, 2014, p.5) that influence the creation of current human rights regimes. Still, memory studies lack the attention to memory in relation to legal protections or natural rights of civilians and human beings (see: Levy & Sznajder, 2010; Fronza, 2005; Sarat and Kearns, 2002).

Memory is crucial to the physical and spiritual wholeness of the human being (MacIntyre, 1984) and collective memory is crucial to the physical and spiritual wholeness of the community. This wholeness is

the keystone of the universal declaration of human rights constituting the contemporary human rights regime (see: Lee & Thomas, 2012; Reading, 2011b). As such, memory rights should be considered as an integral part of the international legal system. However, other than the RTBF European Court decision and guidelines, there is no specific reference, yet, to any right of or for memory. In some contexts the right to memory has been perceived as a social justice element without being defined (Kabalek, 2014). In other context the right to memory has been defined as "the right to a symbolic representation of the past embedded within a set of interventions and social practices" (Reading, 2010, p.1) and as including the right to have "forms of public representation of the otherness of a past" (Reading, 2012, p.122). Elsewhere, it has been suggested that the right to memory entails the right to tell a historic narrative with the right to have an audience who listen to the story (Whelan, 2005). A comprehensive definition was suggested by Lee and Thomas (2012) who argue that the right to memory "affirms and protects 'frameworks of memory' that ensure the physical survival and moral well-being of people." (p.15).

In addition, several international conventions and declarations focusing on human rights affirm, albeit without using the exact term, a right that can be interpreted as a variation of what can be called a "right to memory." (Lee & Thomas, 2012; Reading, 2011b; Lee, 2010) Hence, Article 11 of the United Nations' Declaration on the Rights of Indigenous Peoples (2007) states that:

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, and visual and performing arts and literature. However, the writings about the right to memory in different instances lack the "the specific provisions of [the] right [...] and the kinds of protection needed." (Lee, 2010, p.8) As a response the "right to memory" is defined in this study as such:

The right of individuals and collectives to remember and forget; to be remembered and forgotten at will; to be able to construct and reconstruct collective memories as 'frameworks of memory' are being protected; to have the potential to capitalize on new memory tools, based on new media's unique capabilities; and to have the opportunity to endow unique memories to next generations without prohibitions from dominant political and social agencies.

Implementing a specific and detailed right to memory will help in the governance of our memory ecology in a just way, and by that it will satisfy the needs brought up when forming the right to be forgotten in the first place.

CONCLUSION

This study started by describing the process that eventually led to the creation of what is widely referred to as the right to be forgotten. Then the legal foundations on which the court based its decision were detailed. Claiming that the right to be forgotten is actually about the rights of people as “storytelling animals” (MacIntyre, 1984), this study examined it from a memory studies perspective. Memory studies help in critiquing the right as it has been so far perceived by using two different assumptions. While the right focuses on an imagined forgetting, memory is about both remembering and forgetting and while the right is only applicable to “data subjects” or “natural persons”, memory is actually a process shared by both individuals and collectives.

Later it was claimed that the discourse on the right to be forgotten enabled an opportunity to connect between widely neglected issues – rights and memories. This study outlined an extended “right to memory”, and its realization is crucial in order to achieve the goals stand in the heart of the RTBF legislation. An extended right to memory will help individuals to construct and to have control over their narrative, to be in charge of their memories, to own their identities without neglecting groups and collectives in the process. Basing the governance of memory on the limited right to be forgotten, as suggested by the Court of Justice of the European Union, will not help in evolving a just culture of memory.

A good example of the RTBF failure is the role currently played by Google, the most prominent search engine of our time, in the implementation of the right. Since the court ruling, Google alone has received more than 217,000 requests from private users to remove links from its search engine. For each of these requests Google has made an independent examination deciding if the right of the individual supersedes the public interest in keeping a specific link available on the list of results. In other words, it is Google, a giant private corporation that is legally in charge of the construction of our society’s memory – which is indeed a combination of both our private narratives and our collective stories. This has provided Google officially, with a power that until not long ago was available only to governments and other institutions, which are, at least potentially, democratically elected.

Replacing the RTBF with a broader right to memory will help us to tackle the transformation of Google, or any other private corporation with the ability to commodify our memories – such as Facebook, YouTube or any other social network, into a memory agent legally in charge of our society’s memories. Since, “the question of who holds the keys to our collective memory is one that deserves a discussion, and not just

left to a few companies” (Tufekci, 2014) and as the new right suggested here states, everyone should have the right to construct her or his memory without prohibitions from dominant political and social agencies.

The new right has also other promises. It has the potential to help different groups, mainly from third world countries but not only, to capitalize on the right’s merits in their plight for recognition of their unique history and group identity. The current right to be forgotten is not helpful for these groups as they mostly stand at society’s lower end of the digital scale, they have limited access to online mechanisms of influencing their digital identity, and their struggle for group recognition is coupled by the fact that they struggle in order to gain attention to their story and not have it sentenced into a deeper oblivion.

Criticizing the right to be forgotten does not mean that its contribution to memory discourse is insignificant. The implementation of the RTBF has further legitimized the conversation about memory rights. However, we should not be satisfied with the minimal right achieved and its limited scope, but rather, it is time to advocate an extended right – a right to memory.

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