

Daniel Ronzani

The Right to Be Forgotten

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[Rz 1] How often have we wished for a better memory; and how often have we heard the truism that apparently time heals all wounds. In this respect, the Internet is both a blessing and a curse: it is a great archiving tool, but search engines also provide results that might be out-dated or just unfavourable. The following *selection of measures* might help falling into online oblivion, if so desired:

[Rz 2] *First*, it is reasonable to contact the author of the undesired information and request an *anonymisation or removal*. Any change on the content server will then propagate through the Internet search engines.¹

[Rz 3] *Second*, one might undertake *active online public relations*. By issuing new information on the topic, the undesired information may fall back in search engine rankings over time. However, to be effective, the new posting must be qualified as important by the relevant search engines.²

[Rz 4] *Third*, one might file a *data protection information request*.³ If the request reveals that the personal data processed is disproportionate, incorrect, or incomplete, one might request their correction or deletion.⁴

[Rz 5] *Fourth*, one might file a *complaint* with the Swiss Press Council, if the undesired content is published in the editorial part of public, periodic or current media⁵.

[Rz 6] *Fifth*, one might file a *civil claim* (i) for infringement of personality rights or (ii) for a counterstatement, if personality rights are directly affected by a representation of events in periodically appearing media.⁶ To be effective, such counterstatement should be issued promptly and linked to the main publication. However, a civil claim can also backfire as «Streisand effect»⁷ and should thus be well considered before filing.

[Rz 7] Is it permissible to address the search engine provider directly requesting removal of the undesired content? In a pending landmark case involving Google, not according to the General Attorney at the European Court of Justice: «The rights to erasure and blocking of data, provided for in [the Directive] do not confer on the data subject a right to address himself to a search engine service provider in order to prevent indexing of the information relating to him personally, published legally on third parties» web pages, invoking his wish that such information [...] be consigned to oblivion».⁸

[Rz 8] To date, it is yet uncertain how this opinion will affect the Google case or legislature in the EU⁹ and in Switzerland¹⁰.

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Dieser Newsletter-Artikel wurde erstmals im Januar 2014 veröffentlicht. Er berücksichtigt da-

¹ E.g. support.google.com/webmasters/answer/1663691.

² E.g. Google's PageRank: tinyurl.com/bpq2hx5.

³ Art. 8 Federal Act on Data Protection (FADP), with limitations in Art. 9 and 10 FADP.

⁴ Art. 12 in conjunction with Art. 4, 5 and 13 FADP.

⁵ Art. 1 para. 4 and 8 Regulation Swiss Press Council.

⁶ Art. 28 and 28g Civil Code (CC).

⁷ en.wikipedia.org/wiki/Streisand_effect.

⁸ Opinion of Advocate General Jääskinen, 25 June 2013, Case C-131/12.

⁹ General Data Protection Regulation, European Parliament Plenary Sitting, 21 November 2013, A7-0402/2013.

¹⁰ Postulate Schwaab Jean Christophe, 12.3152.

her den aktuellen Entscheid des EuGH vom 13. Mai 2014 (C-131/12) nicht. Entgegen der im Newsletter-Artikel zitierten Empfehlung des Generalanwalts vom 25. Juni 2013, wonach die EU Datenschutzrichtlinie kein Recht auf Vergessen vorsieht, hat das EuGH nun entschieden, es gäbe ein solches Recht: «Da die betroffene Person in Anbetracht ihrer Grundrechte aus den Art. 7 und 8 der Charta [der Grundrechte (2000/C 364/01)] verlangen kann, dass die betreffende Information der breiten Öffentlichkeit nicht mehr durch Einbeziehung in eine derartige Ergebnisliste zur Verfügung gestellt wird, überwiegen diese Rechte grundsätzlich nicht nur gegenüber dem wirtschaftlichen Interesse des Suchmaschinenbetreibers, sondern auch gegenüber dem Interesse der breiten Öffentlichkeit am Zugang zu der Information bei einer anhand des Namens der betroffenen Person durchgeführten Suche.»