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The protection of the right to be forgotten: lessons and perspectives from Open Data

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Overview

I. The protection of personal information in the open data context

II. The right to be forgotten and the future EU data protection regulation (GDPR)

III. The right to be forgotten in the existing legal framework

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Data protection and open data

✓ **Positive outcomes of open data strategies**

- Transparency (e.g. http://www.wheredoesmymoneygo.org/)

- Accountability

- Non-discrimination

- Potential positive effects on distribution of the control over information

✓ **Big data analytics and their effects on Open Data & RTBF**

- From the individual to groups

- Re-identification

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The RTBF and the future EU GDPR

✓ **Right to be forgotten, right to erasure and freedom of expression**

- Different notions

- The "newsworthiness privilege" and its interpretation

- News and digital archives

✓ **The EU Proposal (and its limits)**

- Art. 17 (erasure due to data processing in contrast with the law or to the original/supervening lack of legal ground)

- Finding a balance between data protection and business efficiency (the removal process)

- Public enforcement and private enforcement (the peculiar position of search engines)

- Main and residual remedies (from robot.txt to Google)

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The RTBF in the existing legal framework

- ✓ **Transparency of removal processes**

- ✓ **Accountability of data controllers**

- ✓ **An open data approach to the implementation of the RTBF.**

  Four scenarios

  - **I scenario**: *open archives of removal cases*
  - EU constraints (ECJ decision, ART29 Working Party opinion, CNIL)
  - Risk of sanctions

The RTBF in the existing legal framework

- **II scenario**: *pseudonymization, anonymization et similia*

- Anonymization and its limits in the big data era (lesson from open data: US medical data)

- Pseudonymization, anonymization and their impact on the assessment of removal processes (lessons from open data: court cases, cases mentioned in the Google's transparency report)

- **III scenario**: *aggregated data* (e.g. Google's transparency report)

- Aggregated information and decontextualization (lesson from open data: educational information)

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The RTBF in the existing legal framework

- **IV scenario**: *an "academic" approach*

- The Zitrain's proposal: "One idea is for Google and other affected search engines to contribute to a database of takedowns that independent academics can analyze in order to produce credible insights about how the new right is working in practice" (lessons from open data: mobility data)

- Requirements and constraints of the EU data protection framework

    - Academic institutions can be involved in the analysis as data processors (Directive 95/46/EC)

    - The exception provided by art. 81(1) EU GDPR

- A research perspective: towards an algorithmic approach to dispute resolution

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