

Legal Regulation & Education: Doing the Right Thing?

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Forgetting across the Pond: Erasure Europe and Aggregation America

The ability to minimise or erase your online presence becomes ever more important with a number of websites now offering services of both deleting your content as well as acting as an online butler to safeguard your identity and your privacy. Policymakers on both sides of the Atlantic have recognised such a need and have enacted or proposed laws to that end.

In the European Union, the proposed reforms to the EU data protection framework have been discussed widely in political, commercial and civil spheres, but few aspects of the proposal have caused as much tumult as "the right to be forgotten". While some argue that there is little novelty to set this right apart from the "right to erasure" currently contained in the 1995 Data Protection Directive, others name it as the grand empowerment of data subjects.

In the United States, more limited efforts have focussed on protecting young people from posts that may come back to haunt them. In California, SB 568 amended the California Online Privacy Protection Act to create what has been termed "a poor man's right to be forgotten", while, in the US Congress, legislation entitled the Do Not Track Kids Act of 2013 (S. 1700, H.R.3481) has been introduced, which would extend this protection to minors throughout the United States.

This paper will review the proposals from both sides of the pond to assess what they will and will not potentially achieve. The paper will consider the EU rules in light of the current framework and the proposed reforms, taking into account the amendments made by the LIBE committee and the Council, comparing the provisions with both the California Law and the proposals pending before the US Congress. Are they the silver bullet that privacy advocates hope for or are they the Pandora's Box of censorship of the Internet that will bring the destruction of history? Are the two measures compatible, signally a convergence of policies towards a more privacy oriented legal structure? To this end, the practical application of the proposed rules, their effectiveness and efficacy will be examined.