10-5e “Right to Be Forgotten”

In 2014 the European Union’s highest court ruled that EU citizens have a “right to be forgotten.” In other words, consumers have the right to prevent certain types of content from showing up in online search results. Such content includes results that are inadequate, irrelevant, no longer relevant, or excessive. The court decision allows individuals to petition search engines to remove such content from search results, and if refused, to take the matter to a local data protection authority for adjudication.

The court decision sent shockwaves through the Internet search community. Was this censorship, or the beginning of an acknowledgment that search engines have a duty to at least somewhat curate their results? Was this a victory for privacy, or a defeat for freedom of speech? How will search companies be able to properly decide whether removal requests are legitimate or stretch beyond the boundaries of the court decision?

In response to the ruling, Google set up a process by which it processes “right to be forgotten” requests. The claimant fills out an online form, which is reviewed and processed by a team of Google lawyers, paralegals, and engineers. “Easy” cases, where the correct decision is relatively clear, are made by that team. Difficult cases are forwarded to a senior panel of Google experts and executives to decide. For instance, a published U.S. record of the name of a 16-year-old German individual convicted in the United States of a sex crime could be controversial because in Germany the record would not be published due to his minor status. Google also releases periodic “Transparency Reports” providing information on right to be forgotten requests. So far, Google has received over 280,000 requests, mostly from individuals who want to protect their private information.

Google and other Internet search companies continue to express their opposition to the “right to be forgotten” concept, and many others agree. Some are opposed to it outright, citing freedom of speech concerns; others believe it may be a good idea but that private companies such as Google should not be the ones deciding which links to keep and which to take down. Simultaneously, EU regulators are dissatisfied with how Google has chosen to interpret the court decision. For example, Google is only removing links from its Europe-specific search engines such as Google.fr or Google.co.uk, meaning anyone can simply move to Google.com to find the hidden content. Simultaneously, other areas of the world are considering the right to be forgotten idea, with varying success. In Mexico courts have ruled for some individuals petitioning Google to remove content, but critics worry the right is being used largely by politically powerful individuals to remove unsightly aspects of their past. California has passed a law requiring websites to provide a mechanism by which minors can have content they post removed, believing children should not be punished for online missteps. Hong Kong’s top privacy regulator has embraced the concept wholeheartedly, suggesting Google should apply the EU ruling to its operations globally.

It is still too early to say what the long-term implications of the “right to be forgotten” will be. However, it adds another wrinkle in Google’s privacy concerns. Now, at least in some parts of the world, Google must not only worry about the information it collects itself but also

about what information posted by third parties might be showing in its search results.