

# Right to be forgotten

CS489  
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**General Data Protection Regulation**  
**EU's current framework for data protection laws, passed in 2018**

# Terminology

- **Data controller:** means a natural/artificial person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed
- **Data processor:** any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

# Terminology

- **Processing:** obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
  - organisation, adaptation or alteration of the information or data,
  - retrieval, consultation or use of the information or data,
  - disclosure of the information or data by transmission, dissemination or otherwise making available, or
  - alignment, combination, blocking, erasure or destruction of the information or data

# Terminology

- **Personal data:** any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity

# GDPR Principle

- Unless a data subject has provided *informed consent* to data processing for one or more purposes, personal data may not be processed unless there is at least one legal basis to do so.

# Legal Basis for Processing Personal Data

- If the data subject has given consent to the processing of his or her personal data;
- To fulfill contractual obligations with a data subject, or for tasks at the request of a data subject who is in the process of entering into a contract;
- To comply with a data controller's legal obligations;
- To protect the vital interests of a data subject or another individual;
- To perform a task in the public interest or in official authority;
- For the legitimate interests of a data controller or a third party, unless these interests are overridden by interests of the data subject Nor her or his rights according to the Charter of Fundamental Rights (especially in the case of children).

# Rights of the Data Subject

- Right to be informed: data controller should provide information to the data subject *in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child.*
- Right to access: data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed



# Rights of the Data Subject

- Right to rectification: The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her.
- Right to restriction of processing: data subject can restrict processing if
  - accuracy of personal data is contested / processing is unlawful / controller no longer needs the data but subject needs it for legal claims / subject formally object to processing itself

# Rights of the Data Subject

- Right to portability: data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, *in a structured, commonly used and machine-readable format* and have the *right to transmit those data to another controller* without hindrance from the controller to which the personal data have been provided.
- Right against automated individual decision making: data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

**and then, one for  
today:**

# Rights of the Data Subject

- Right to erasure (also commonly known as right to be forgotten): data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
  - personal data no longer necessary in relation to original purpose / subject withdraws consent / subject objects and no legal ground to override / unlawful processing / personal data have to be erased for legal reasons / consent given as children

# GDPR & Guides

- General Data Protection Regulation - EU
- What is GDPR? The summary guide to GDPR compliance in the UK - Wired UK

- Have you ever had to forgive someone?
- They say “time heals all wounds”: do you agree?
- If Internet does not allow us to forget anything, does it affect our capability to forgive?

# Forgetting vs. Forgive

- Insofar as forgiving involves “the forswearing of negative emotions”, it, in contrast to forgetting, is something we do, not something that merely happens to us. It requires that the forgiver decides to forswear resentment, and it is done for a reason - Oliver Hallich, “Can the Paradox of Forgiveness Be Dissolved?”, Journal of Ethical Theory and Moral Practice

# The Opposite...?

- Giles Fraser argues that the internet generation will be better at forgiveness, simply because we won't forget.
- “For if we are going to find it more and more difficult to forget, then we are surely going to find it more and more important to forgive.”
- <https://www.theguardian.com/commentisfree/belief/2014/may/16/internet-generation-lot-better-forgiveness>

Loose canon Internet

The internet generation will be a lot better at forgiveness than older people

*Giles Fraser*

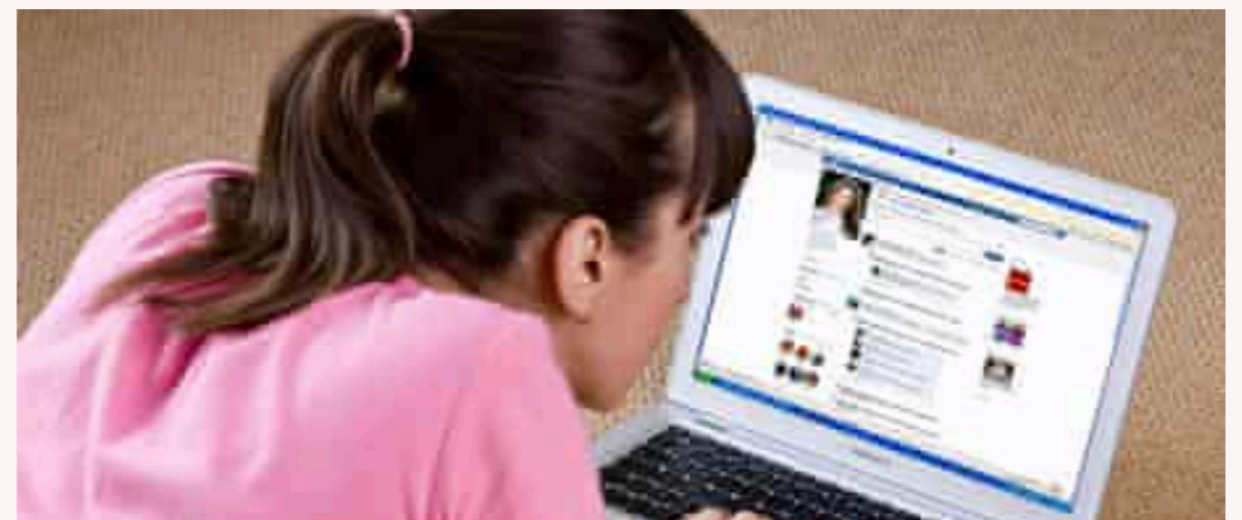


As with an omniscient God, so the all-remembering internet means our past must be dealt with rather than denied or deleted

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# OpenNet's Stance (2016)

- 정보의 시의성은 정보주체의 주관적 상황에 따라 판단할 수 없다. 해운업자는 과거의 여객선 과적 사실이 지금 운행상황과는 무관하다고 주장하겠지만 조금이라도 더 안전한 배에 자녀들을 태우고 싶은 학부모들 입장에서는 매우 유의미한 정보이다. 단지 시간이 흘렀고 정보주체의 사정이 바뀌었다고 해서 그 정보가 타인들에게 얼마나 절실할 수 있는지를 배제하고 정보유통을 제한하는 것은 타인의 알 권리를 비례성 있게 보호하는 것이 아니다.
- Timeliness of information cannot be judged based on the subjective circumstances of the data subject. A shipping company will want to claim that past accident has nothing to do with the current ships; however, this is a valuable information for parents who want to board their children to safer ships, however small the difference may be. To restrict information flow without considering how valuable the information can be to others, simply because time elapsed and the original data subject's circumstances have changed, is not protecting the right to know of others proportionately.
  - “Opposing the rule for right to be forgotten by KCC” - OpenNet

# Right to be forgotten, in Korea

- Korea's Communications Commission (방송통신위원회) published guidelines "on the Right to Request Access Restrictions on Personal Internet Postings"
- It is a guideline, not a legislation: it anticipate the service companies to take part voluntarily.

# Is it just censorship? How far can it go?

- Google Spain v Agencia Española de Protección de Datos, Mario Costeja González (2014):
  - A lawyer finds out that googling name shows the advertisement of auction of the house due to debt in the past > asks Google Spain to delete this > Google refuses (we're only search engine, the government owns the public record) > CJEU orders Google to delete the search result
  - [https://en.wikipedia.org/wiki/Google Spain v AEPD and Mario Costeja González](https://en.wikipedia.org/wiki/Google_Spain_v_AEPD_and_Mario_Costeja_González)

# Is it just censorship? How far can it go?

- A Dutch surgeon vs. Google (2019)
  - A surgeon was initially suspended by disciplinary panel due to post-operation care of a patient > later the penalty was changed to conditional-suspension and the surgeon was allowed to practise > a third party website listed the surgeon's name in an unofficial black-list > the surgeon won using the right to be forgotten clause
  - “The judge said that while the information on the website with reference to the failings of the doctor in 2014 was correct, the pejorative name of the blacklist site suggested she was unfit to treat people, and that was not supported by the disciplinary panel's findings.”
  - <https://www.theguardian.com/technology/2019/jan/21/dutch-surgeon-wins-landmark-right-to-be-forgotten-case-google>

# It's not only the memory

- Internet not only remembers: it amplifies, adds noises and echoes, reaches millions of people at once, etc, to all the negative impact we have considered earlier.



# Concluding Thoughts

- What do “I” want deleted from the internet? :)
- Do you support the right to be forgotten?
- Is true, complete redemption possible in the age of internet and social media?