EUROPEAN FUNDAMENTAL VALUES IN THE DIGITAL ERA

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Kharkiv
“Pravo”
2024

DOI: https://doi.org/10.31359/9786178518073
UDC 340+343+347+140
E91

European Fundamental Values in the Digital Era : [monograph] / eds.:
E91 Yulia Razmetaeva, Nataliia Filatova-Bilous ; European Union ; Jean Monnet Centre of Excellence "European Fundamental Values in Digital Era" ; Yaroslav Mudryi National Law University. – Kharkiv : Pravo, 2024. – 316 p. – DOI: https://doi.org/10.31359/9786178518073.

ISBN 978-617-8518-07-3

This monograph is the result of cooperation between Ukrainian and European researchers on European fundamental values in the digital age. The book consists of three parts, the first of which is devoted to the general theoretical analysis of European fundamental values, the second – to the way the European fundamental values are implemented in modern contract and tort law, and the third – to the implementation of European fundamental values in procedural law in the digital era.

The book will be interesting to scholars and practitioners, students and teachers, as well as anyone interested in law and digital technologies.

UDC 340+343+347+140

This publication is part of the Jean Monnet Centre of Excellence "European Fundamental Values in Digital Era", EFVDE (2022–2025), 101085385 – EFVDE – ERASMUS-JMO-2022-HEI-TCH-RSCH, Grant Agreement decision no 101085385, co-funded by the European Union. This collective monograph is open access publication.

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ISBN 978-617-8518-07-3

ЄВРОПЕЙСЬКІ ФУНДАМЕНТАЛЬНІ ЦІННОСТІ В ЦИФРОВУ ЕРУ

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Харків
«Право»
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DOI: https://doi.org/10.31359/9786178518073
УДК 340+343+347+140
Е91

Європейські фундаментальні цінності в цифрову еру : [монографія] /
Е91 ред.: Юлія Размєтаєва, Наталія Філатова-Білоус ; Європ. Союз ; Центр Досконалості Жана Моне «Європ. фундамент. цінності в цифр. еру» ; Нац. юрид. ун-т ім. Ярослава Мудрого. – Харків : Право, 2024. – 316 с. – DOI: https://doi.org/10.31359/9786178518073. – (Англ. і укр. мовою).

ISBN 978-617-8518-07-3

Ця монографія є результатом співпраці українських та європейських учених у сфері дослідження європейських фундаментальних цінностей у цифрову епоху. Книга складається з трьох частин, перша з яких присвячена загальнотеоретичному аналізу європейських фундаментальних цінностей, друга – тому, як європейські фундаментальні цінності імплементовані в сучасному договірному й деліктному праві, а третя – імплементації європейських фундаментальних цінностей у процесуальне право в цифрову епоху.

Книга буде цікава для науковців та практиків, студентів і викладачів, а також усіх, хто цікавиться проблематикою права й цифрових технологій.

УДК 340+343+347+140

Ця публікація є частиною проєкту Центр Досконалості Жана Моне «Європейські фундаментальні цінності в цифрову еру», EFVDE (2022–2025), 101085385 – EFVDE – ERASMUS-JMO-2022-HEI-TCH-RSCH, грантова угода 101085385, що співфінансується Європейським Союзом. Ця колективна монографія є виданням у відкритому доступі.

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ISBN 978-617-8518-07-3

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Preserving Privacy: Exploring Digital Silence in the European Context

Oksana Kiriiak*

Abstract: In the contemporary digital era, the notion of "digital silence" has emerged as a critical concept in discussions surrounding privacy, data protection, and online autonomy, particularly within the European Union (EU). This paper presents an in-depth analysis of the multifaceted phenomenon of digital silence, examining its definition, manifestations, legal implications, societal dynamics, and ethical considerations. Drawing upon extensive literature, case law, regulatory frameworks, and empirical research, this comprehensive study offers a nuanced understanding of digital silence and its significance in shaping the evolving landscape of digital rights and responsibilities in Europe. By exploring the intersections of law, society, and technology, this paper contributes to ongoing debates on digital privacy, data protection, and the ethical dimensions of digital behavior, offering insights for policymakers, legal scholars, technologists, and individuals navigating the complexities of the digital age.

Keywords: human rights; digital silence; right to privacy; right to be forgotten; right to erasure; digital freedom

1. Introduction

The evolution of human rights and freedoms stands as a pivotal achievement in the historical trajectory of societal legal development, tracing its origins from antiquity to the contemporary era, wherein human rights have evolved into an indispensable facet of democratic governance under the rule of law. As society progresses and cutting-edge digital technologies permeate our

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existence, novel rights and modalities of their enforcement emerge, surpassing the imagination of earlier epochs. The proliferation of digital interaction platforms within mass culture reflects this unprecedented development, accompanied by a concomitant surge in legal complexities arising from the expansive reach and transformative potential of modern technologies. Moreover, the advent of legal constraints and regulations governing information dissemination underscores the evolving paradigm of state sovereignty, extending its purview to encompass the digital realm. In light of these multifaceted dynamics, contemporary legal discourse grapples with an array of emergent issues, necessitating nuanced legal analysis and adaptive regulatory frameworks to address evolving societal needs and safeguard fundamental rights in the digital age.

The advent of digital technology has revolutionized the way individuals interact, communicate, and navigate the world around them. However, alongside the benefits of digital connectivity, concerns about privacy, data protection, and online surveillance have become increasingly salient, prompting discussions about the concept of "digital silence" – the deliberate or involuntary absence or suppression of digital traces or data related to an individual's online activities. In the European context, where data protection regulations are among the most stringent globally, digital silence has emerged as a focal point in debates surrounding digital rights, freedoms, and ethical considerations. This paper seeks to explore the multifaceted nature of digital silence, examining its legal foundations, societal implications, and ethical dimensions within the European Union.

2. Exploring the notion of digital silence

Digital silence encompasses a diverse array of behaviors, practices, and circumstances that result in the absence or

suppression of digital data pertaining to an individual's online presence or activities. This may include strategies such as refraining from using digital devices or online platforms, employing privacy-enhancing technologies such as virtual private networks (VPNs) or encryption, or intentionally limiting the disclosure of personal information online. Digital silence can manifest in both voluntary and involuntary forms, reflecting individual choices, technological constraints, legal requirements, or social norms. While the concept of digital silence remains fluid and context-dependent, its implications for privacy, autonomy, and societal norms are profound, necessitating a nuanced examination of its legal and ethical dimensions.

2. 1. Legal framework

Within the European Union, the legal framework governing digital silence is anchored in the General Data Protection Regulation (GDPR), a comprehensive regulatory regime designed to safeguard individuals' rights to privacy and data protection. The GDPR affords individuals certain rights, including the right to erasure (commonly known as the "right to be forgotten"), which enables individuals to request the deletion or removal of their personal data from online platforms under specific circumstances. While the GDPR represents a significant milestone in data protection law, its application in practice raises complex legal and ethical questions regarding the balance between individual rights, freedom of expression, and public interests. Furthermore, the extraterritorial reach of the GDPR poses challenges for enforcing data protection standards across borders, particularly in an increasingly globalized and interconnected digital environment.

The European Union and the United States engage with the 3SI in recognition of the vital importance that greater economic convergence and a stable, interconnected, and economically

vibrant Central and Eastern Europe has for European stability and cohesion in an increasingly challenging geopolitical context, according to Frances G. Burwell F. G., Fleck J. (2020).[1]

European legislation addresses the concept of digital silence primarily through data protection regulations, with the General Data Protection Regulation (GDPR) serving as the cornerstone of legal frameworks across European Union (EU) member states. The GDPR grants individuals certain rights regarding the processing of their personal data, including the right to erasure, commonly known as the "right to be forgotten". This right allows individuals to request the deletion or removal of their personal data from online platforms under specific circumstances.

Various EU member states have implemented the GDPR into their national legislation, thereby providing legal mechanisms for individuals to exercise their rights related to digital silence. For example:

In France, the GDPR is complemented by the French Data Protection Act (Loi Informatique et Libertés), which regulates the processing of personal data and the exercise of data subjects' rights. The challenge of digital technology – as it was pointed out by Anaïs Theviot (2019)[2] is deeply societal: understanding computer thinking will be essential to not be left behind in a society where connected objects and algorithms will take a considerable place in the years to come. French courts have adjudicated cases involving the right to be forgotten, such as the landmark "Google Spain" case, where the Court of Justice of the European Union (CJEU) ruled that individuals have the right to request the removal of search engine links containing personal information that is inadequate, irrelevant, or no longer relevant.

[1] Frances G. Burwell F. G., Fleck J. The Next Phase of Digitalization in Central and Eastern Europe: 2020 and Beyond. Feb. 1, 2020. P. 8.

[2] Anaïs Theviot. Digitalization and Political Science in France. *Political Science and Digitalization – Global Perspectives*, 2019, p. 143.

Germany has enacted the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG) to supplement the GDPR and address specific national requirements. Despite the phenomenon that the comparatively affluent country of Germany was always relatively late when it came to digital innovation, globalization enforced most of the trends, which Germany in time also implemented, since Norbert Kersting put it this way (2019).[3] German courts have interpreted and applied the GDPR in cases concerning the right to be forgotten, considering factors such as the balance between privacy rights and freedom of expression.

While no longer an EU member state, the UK has incorporated the GDPR into its national law through the Data Protection Act 2018. UK courts, including the Supreme Court and the Court of Appeal, have dealt with cases related to the right to be forgotten, providing guidance on its interpretation and application within the UK legal context.

These examples demonstrate how European legislation, including the GDPR and national data protection laws, addresses the concept of digital silence by providing individuals with legal mechanisms to control their personal data and exercise their privacy rights online. Through legislative frameworks and judicial decisions, European countries seek to strike a balance between protecting individuals' privacy and upholding other fundamental rights and societal interests.

Beyond its legal dimensions, digital silence has far-reaching societal implications, influencing patterns of online behavior, social interactions, and cultural norms within European societies. The phenomenon of digital silence reflects broader societal concerns about privacy, surveillance, and the erosion of personal autonomy in the digital age. Moreover, digital silence intersects with issues of digital exclusion, inequality, and discrimination, as individuals

[3] Norbert Kersting. Digitalization and Political Science in Germany. Political Science and Digitalization – Global Perspectives, 2019, p. 146.

from marginalized or vulnerable communities may face barriers to accessing or controlling their digital footprint. Understanding the societal dynamics of digital silence is crucial for informing policy debates, promoting digital literacy, and fostering inclusive and ethical practices in the digital realm.

In addition to its legal and societal dimensions, digital silence raises important ethical questions about the balance between individual privacy rights, freedom of expression, and the public interest. Ethical considerations surrounding digital silence encompass issues such as consent, transparency, accountability, and the ethical use of technology. As digital technologies continue to evolve and permeate all aspects of society, ethical frameworks and guidelines are needed to ensure that the benefits of digital innovation are balanced with the protection of individual rights and freedoms. Moreover, ethical debates surrounding digital silence extend beyond legal compliance to encompass broader questions about social responsibility, ethical leadership, and the ethical design and deployment of digital technologies.

The correlation between the right to be forgotten and the right to digital silence lies in their shared objective of empowering individuals to control their digital footprint and protect their privacy in the digital age. While the right to be forgotten focuses on the removal or delisting of specific personal information from online platforms, the right to digital silence encompasses a broader notion of managing one's online presence and minimizing digital traces altogether.

Both rights recognize the importance of individuals' autonomy over their personal data and seek to address the challenges posed by the permanence and ubiquity of information on the internet. By exercising the right to be forgotten, individuals can request the removal of outdated, inaccurate, or irrelevant information that may adversely affect their reputation or privacy. Similarly, the right to digital silence allows individuals to proactively control

the dissemination of their personal data and limit the exposure of sensitive information online.

Furthermore, the right to be forgotten and the right to digital silence are interconnected in their legal and technological implications. Legal frameworks such as the EU General Data Protection Regulation (GDPR) provide a legal basis for individuals to assert their rights to data privacy and protection, including the right to request the erasure of personal data (right to be forgotten). At the same time, advances in technology, such as privacy-enhancing tools and encryption methods, enable individuals to exercise greater control over their digital presence and maintain digital silence.

In practice, individuals may invoke both rights in tandem to achieve their privacy objectives. For example, someone seeking to minimize their digital footprint may use the right to be forgotten to remove specific instances of personal information from search results or social media platforms while also adopting privacy-enhancing measures to prevent the collection and dissemination of additional data. Conversely, exercising the right to digital silence by limiting online activities and data sharing may complement efforts to assert the right to be forgotten by reducing the amount of personal information available for indexing and dissemination.

Overall, the correlation between the right to be forgotten and the right to digital silence underscores the evolving nature of privacy rights in the digital era and the need for comprehensive legal and technological solutions to protect individuals' privacy and autonomy online.

2.2. Unraveling the right to be forgotten

Arguably, Vladimir Jankélévitch (2005)[4] posits that while it may be conceivable to navigate life without actively remembering, the act of forgetting is an inevitable facet of human existence:

[4] Jankélévitch, Vladimir. Forgiveness, *University of Chicago Press*, (2005), 27.

the ability to recollect the past enables societies to reconcile with historical events and move forward. This sentiment resonates with the assertions of Viktor Mayer-Schönberger (2011),[5] who contends that in an era where remembrance has become ubiquitous, there arises a parallel imperative for the right to be forgotten. As Chanhee Kwak et al. (2021)[6] underscore, the advent of information and communication technologies has ushered in a paradigm shift in human memory, exponentially augmenting its storage and retrieval capacities. The proliferation of digital records has rendered moments of individuals' lives indelible, transforming the perception of memory from ephemeral to enduring. Consequently, this evolution raises profound questions regarding the implications of digital memory on personal autonomy, privacy rights, and societal norms surrounding forgiveness and reconciliation. In navigating this terrain, legal scholars and policymakers must grapple with the intricate balance between the preservation of historical truth, the protection of individual privacy, and the promotion of societal healing and progress.

This discovery lends credence to Cayce Myers' assertions (2014)[7] regarding the contemporary challenge posed by the digitalization of personal history. Unlike previous epochs, where an individual's past was preserved through tangible artifacts like photographs, diaries, and collective memories, the digital age confers a form of immortality through online presence. Delving into

[5] Mayer-Schönberger, Viktor. (2011). Delete: The virtue of forgetting in the digital age. Princeton: *Princeton University Press*. (2011), 165.

[6] Kwak Chanhee, Lee Junyeong, Lee Heeseok. Could You Ever Forget Me? Why People Want to be Forgotten Online. (2021) *Journal of Business Ethics*. https://www.scopus.com/record/display.uri?eid=2-s2.085100146466&origin=resultslist&sort=plf-f&src=s&st1=&st2=&sid=0daeb36f35186b6eecf36fa91bb91586&sot=b&sdt=b&sl=36&s=TITLE-ABS-KEY%28right+to+be+forgotten%29&relpos=3&citeCnt=0&searchTerm=

[7] Myers, Cayce. Digital Immortality vs. "The Right to be Forgotten": A Comparison of U. S. and E. U. Laws Concerning Social Media Privacy. *Revista Română de Comunicare şi Relaţii Publice*. No: 3XVI. (2014), 48.

the scholarly discourse on this subject, Meg Leta Jones (2018)[8] highlights the internet's transformation into a vast repository of searchable data, serving as a dynamic cultural memory with multifaceted implications. This narrative aligns with Viktor Mayer-Schönberger's (2011)[9] findings, which underscore the irreversible entwinement of personal actions with digital footprints, rendering escape from one's past a practical impossibility. Consequently, this phenomenon engenders a host of legal and ethical considerations pertaining to privacy, data protection, and individual autonomy. As society grapples with the ramifications of ubiquitous digital memory, legal scholars are tasked with navigating the complexities of balancing historical preservation, personal privacy, and the right to be forgotten in the digital age.

The innate desire for individuals to control certain aspects of their personal information within the public domain is inherently reasonable and often universally recognized. However, translating this desire into actionable legal mechanisms within societies that champion openness and freedom of expression presents considerable challenges. As Rebekah Larsen (2020)[10] aptly observes, the right to be forgotten (RTBF) is not an absolute entitlement under the law; rather, it must be judiciously balanced against competing fundamental rights, particularly the right to freedom of expression, which serves as a cornerstone of democratic societies. This nuanced interplay between individual privacy rights and broader societal interests underscores the complex nature of legal and ethical considerations surrounding the implementation of RTBF regulations. Moreover, the evolution of digital technologies

[8] Jones, Meg Leta. Ctrl + Z: The Right to Be Forgotten. *NYU Press* (2018), 5.

[9] Mayer-Schönberger, Viktor. Delete: The virtue of forgetting in the digital age. Princeton: *Princeton University Press*. (2011), 163–164.

[10] Larsen, Rebekah. Mapping Right to be Forgotten frames: Reflexivity and empirical payoffs at the intersection of network discourse and mixed network methods. *New media & society*. Vol. 22(7), (2020), 1246.

and the exponential growth of online content further complicate matters, necessitating ongoing deliberation and refinement of legal frameworks to effectively address contemporary challenges. In navigating this intricate landscape, legal scholars and policymakers must strive to strike a delicate balance that upholds individual autonomy while safeguarding the collective interests of society. This requires a nuanced understanding of the evolving dynamics between privacy, freedom of expression, and the public interest, coupled with a commitment to fostering a legal environment that promotes accountability, transparency, and respect for human rights in the digital age.

In the contemporary legal landscape, there is a growing recognition of the imperative to reconcile human rights principles with positive law, viewing them not as mutually exclusive entities but rather as integral components of a cohesive legal framework. It is increasingly evident that a nuanced and modern normative legal perspective is essential for addressing the inherent tensions between traditional legal norms and evolving human rights standards, thereby fostering a more harmonious integration of these elements within legal practice. This necessitates a paradigm shift in the perception of human rights from mere ideological constructs to tangible legal realities, thereby enabling law enforcement agencies to navigate the complexities of human rights law with greater efficacy and precision. Central to this discourse is the notion of human rights as a dynamic legal construct, demanding rigorous interpretation and application to ensure optimal outcomes in law enforcement and judicial decision-making.

An ideal litmus test for exploring the intersection between human rights and digital memory lies in the realm of the right to be forgotten (RTBF), a concept that has yet to be fully integrated into the Ukrainian legal framework. As such, the RTBF serves as a compelling case study for examining the progressive evolution

of legal perceptions and interpretative methodologies in response to emerging legal phenomena. The nascent status of the RTBF within the Ukrainian legal system offers a unique opportunity to scrutinize its reception and implementation through the lens of positive legal norms, interpretive frameworks, and evolving jurisprudential approaches. By engaging with the RTBF in this context, legal scholars and practitioners can gain valuable insights into the broader dynamics of human rights law in the digital age, thereby contributing to the ongoing refinement of legal theory and practice in Ukraine and beyond.

The pluralism of approaches to the RTBF reflects the interdisciplinary nature of contemporary legal scholarship, drawing upon insights from various fields such as law, ethics, sociology, and information science to elucidate its legal and societal implications. Scholars have explored a range of conceptual frameworks and methodological approaches to understand the complexities of the RTBF, enriching the scholarly discourse and advancing nuanced understandings of its normative dimensions. Moreover, the plurality of perspectives underscores the inherent tensions between competing rights and interests, including privacy, freedom of expression, and access to information, in the digital realm. Rebekah Larsen's contributions (2020)[11] to this discourse is notable, particularly her insights into the pluralistic and democratic ethos of information networks, which serve as platforms for the exchange of diverse perspectives and methodologies in legal scholarship. By engaging with this diversity of viewpoints, scholars can deepen their understanding of the ethical and legal complexities inherent in the RTBF and contribute to the development of more robust and contextually relevant legal frameworks.

In the contemporary landscape of legislative practice, a plethora of approaches emerge when dissecting the pertinent question

[11] Larsen, Rebekah. *New media & society*, 1247.

at hand. These diverse perspectives offer valuable insights into the multifaceted nature of legal discourse and underscore the complexity inherent in defining the subject matter.

Firstly, it is imperative to explore the conceptual nuances surrounding the topic, delving into the various interpretations offered by legal scholars and practitioners alike. This entails scrutinizing the definitional parameters from multiple angles to gain a comprehensive understanding of the subject's scope and implications. Secondly, contextual factors must be taken into account, as the interpretation of legal concepts often hinges on the specific legal, cultural, and societal contexts in which they are applied.

Furthermore, historical perspectives shed light on the evolution of legal definitions over time, highlighting shifts in societal norms, technological advancements, and jurisprudential paradigms. By tracing the trajectory of definitional frameworks, we can discern patterns of continuity and change, illuminating the underlying principles that inform contemporary legal discourse. Additionally, comparative analysis offers valuable insights by juxtaposing divergent approaches across different jurisdictions and legal systems.

Moreover, interdisciplinary perspectives enrich the discourse by drawing upon insights from adjacent fields such as philosophy, sociology, and linguistics. These interdisciplinary exchanges foster a more holistic understanding of the subject matter, transcending traditional disciplinary boundaries and enhancing the richness of legal scholarship. Ultimately, by engaging with a diverse array of definitional frameworks and methodological approaches, we can navigate the complexities of the subject with greater nuance and depth, contributing to the advancement of legal theory and practice.

In our assessment, several definitional frameworks warrant consideration as we navigate the intricacies of this issue: (1) a right

to removal (Selen Uncular, 2019),[12] (2) a right to suppression (Christopher Kuner, 2015),[13] (3) a right of oblivion (Cayce Myers, 2014).[14]

Considering the elucidation provided by the aforementioned definitions, it is our contention that there exists no basis for antagonism among them; rather, they are poised to complement one another, fostering a multifaceted examination of the subject matter. This harmonious coexistence of diverse viewpoints enables a comprehensive exploration of the intricacies inherent in the topic, affording the opportunity to leverage varied perspectives in probing the same issue from different angles.[15] Moreover, advocates for the expanded utilization of this legal construct converge in their recognition of the right to be forgotten (RTBF) as an avenue for individuals to unburden themselves from past encumbrances and embark on a fresh start unencumbered by historical baggage.

Conversely, neglecting any of the constituent elements delineated above jeopardizes the integrity of the overarching framework governing the RTBF, thus undermining the holistic understanding of this legal prerogative. As underscored by Mattias Goldmann (2020),[16] the RTBF holds relevance across multiple

[12] Uncular, Selen. The right to removal in the time of post-Google Spain: myth or reality under general data protection regulation?, *International Review of Law, Computers & Technology*, Vol. 33 /3 (2019), 310.

[13] Kuner, Christopher. The Court of Justice of the EU Judgment on Data Protection and Internet Search Engines, LSE Law, Society and Economy Working Papers 3/2015, p. 7, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2496060 (last accessed 14.02.2020).

[14] Myers, Cayce. Digital Immortality vs. "The Right to be Forgotten": A Comparison of U. S. and E. U. Laws Concerning Social Media Privacy. *Revista Română de Comunicare şi Relaţii Publice*. No: 3XVI. (2014), 48.

[15] Pagallo, Ugo and Durante, Massimo. Legal Memories and the Right to be Forgotten, in L. Floridi (eds.), Protection of Information and the Right to Privacy – A New Equilibrium? *Springer Verlag*, (2014), 19.

[16] Goldmann, Mattias. As Darkness Deepens: The Right to be Forgotten in the Context of Authoritarian Constitutionalism. *German Law Journal*. 21. (2020), 53.

domains, and it is only through a comprehensive consideration of its manifold dimensions that its true significance emerges. By embracing the multiplicity of perspectives and acknowledging the interconnectedness of its various facets, the concept of the RTBF emerges as a nuanced and indispensable component of contemporary legal discourse.

Significantly, within the legal framework, the right to be forgotten (RTBF) is not construed as an absolute entitlement; rather, it necessitates a delicate equilibrium with "other fundamental rights", as per recognized legal precepts.[17] The notion of curtailing rights and freedoms is presently enshrined as a normative principle under international law, as elucidated by Robert Tabaszewski (2020).[18] Furthermore, the interconnection between the observance of human rights and business ethics, particularly within the realm of corporate social responsibility, has garnered increasing attention in contemporary discourse. This paradigm shift reflects a departure from the laissez-faire ethos of unbridled capitalism towards a more socially conscious approach to entrepreneurship, as highlighted by Kinga Machowicz (2021).[19]

Nevertheless, the expanding ambit of EU data protection law, inclusive of the right to be forgotten, has encountered mounting challenges regarding jurisdictional boundaries, as noted by Federico Fabbrini and Edoardo Celeste (2020).[20] This ongoing

[17] Larsen, Rebekah. Mapping Right to be Forgotten frames: Reflexivity and empirical payoffs at the intersection of network discourse and mixed network methods. *New media & society*. Vol. 22(7), (2020), 1246.

[18] Tabaszewski, Robert. The Permissibility of Limiting Rights and Freedoms in the European and National Legal System due to the Health Protection. *Review of European and Comparative Law*. Vol. XLII, Issue 3, (2020), 54.

[19] Machowicz, Kinga. Observance of human rights as an element of shaping the position of the European enterprise in the knowledge-based economy. *Review of European and Comparative Law*. Issue 1, (2021), 16.

[20] Fabbrini, Federico and Celeste, Edoardo. The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders. *German Law Journal* 21, (2020), 56.

debate underscores the need for a nuanced understanding of the interplay between legal principles and technological advancements in the digital age. As the landscape of data privacy continues to evolve, legal scholars and practitioners alike are tasked with navigating the complex terrain of jurisdictional sovereignty and transnational cooperation in safeguarding individual rights within an increasingly interconnected global context.

As underscored by Jennifer Daskal (2018),[21] an escalating number of judicial proceedings worldwide have brought forth "critically important questions about the appropriate scope of global injunctions, the future of free speech on the internet, and the prospect for harmonization (or not) of rules regulating online content across borders". These assertions carry significant weight, considering that until recently, domestic jurisprudence largely confined discussions on forgetting within the purview of mundane human oversight or grammatical errors. Instances of forgetfulness cited in judicial texts often pertained to trivial matters such as forgetting one's name, failing to affix a seal, or overlooking a promissory note, among others. Even colloquial references, like the village of Zabuttya (Oblivion) in the Khmelnytsky region of Ukraine, were invoked within this narrow context.

However, beneath the surface lies a broader, global predicament, as astutely articulated by Mattias Goldmann (2020),[22] who posits that the cases adjudicated by the Court of Justice of the European Union (CJEU) in recent years merely scratch the surface of a much larger issue. These legal deliberations represent only a fraction of the myriad complexities surrounding the right to be forgotten and its implications for individual privacy, freedom of expression, and

[21] Daskal, Jennifer. Google, Inc v. Equustek Solutions. *American Journal of International Law,* Volume 112, Issue 4, (2018), 730.

[22] Goldmann, Mattias. As Darkness Deepens: The Right to be Forgotten in the Context of Authoritarian Constitutionalism. *German Law Journal*. 21. (2020), 46.

transnational legal frameworks. As legal scholars and practitioners grapple with these multifaceted challenges, it becomes imperative to foster interdisciplinary dialogue and collaborative efforts aimed at navigating the evolving landscape of digital rights and responsibilities in the 21st century.

Rather than confining the usage of the term "RTBF" solely within the domain of comparative law and scholarly discourse, recent developments warrant its application in a more concrete, literal sense as delineated in EU Directives. For instance, in a notable case brought before the Desniansky District Court of Chernihiv in May 2018 (case № 750/5021/18, proceedings № 4-s/750/45/18[23]), PERSON_1 filed a complaint against the actions and inaction of the chief state executor of the Central Department of the State Executive Service of Chernihiv city, within the Main Territorial Department of Justice in the Chernihiv region. In their complaint, PERSON_1 specifically invoked the provisions of "RTBF", as outlined in Article 17 of the General Data Protection Regulation of the European Union. This legal recourse underscores a paradigm shift towards the direct invocation of EU regulations within Ukrainian legal proceedings, marking a significant departure from traditional jurisprudential practices.

However, this isolated instance represents merely a fraction of the potential scope of judicial challenges pertaining to the implementation of RTBF within Ukrainian legal frameworks. As stakeholders continue to grapple with the intricacies of data protection and privacy rights in an increasingly digitized world, achieving consensus on the application and interpretation of RTBF remains an ongoing challenge. Moreover, the convergence of legal norms and practices across diverse jurisdictions underscores the need for harmonization and standardization efforts to ensure

[23] Desniansky District Court of Chernihiv. Juidgement of 25 May 2018 https://reyestr.court.gov.ua/Review/74269229 (accessed on 31.03.2021).

consistent and equitable treatment of individuals' rights across borders. As such, ongoing dialogue and collaboration among legal scholars, policymakers, and practitioners are essential to navigate the evolving landscape of data privacy and protection in the digital age.

The divergence in scholarly interpretations regarding the essence of RTBF serves as a counterbalance to the prevailing consensus among state authorities, who often adhere to antiquated standards in evaluating social phenomena, particularly within the digital realm. In parallel, the framework of post-Soviet legal reasoning and jurisprudence does not consistently accommodate the nuances of Ukrainian legal culture and the distinctive characteristics of the country's academic landscape. In this context, the scholarly insights articulated by Jure Globocnik (2020)[24] merit consideration, as they underscore the complexity of delineating boundaries in the online sphere and highlight the far-reaching implications of judicial decisions, not only for internet users but also for technology companies operating within and beyond the EU. Moreover, Globocnik's observations shed light on the pioneering role of the Court in shaping the discourse on the right to be forgotten, suggesting that its rulings may indirectly influence legislative frameworks and judicial precedents in non-EU jurisdictions. Consequently, these multifaceted dynamics underscore the need for a nuanced and contextually informed approach to legal scholarship and policy-making in the digital age, one that acknowledges the interconnectedness of legal regimes and the transnational nature of contemporary legal challenges.

However, the most glaring legal inconsistency arises not merely from a court's denial of a petitioner's RTBF claim, but

[24] Globocnik, Jure. The Right to Be Forgotten is Taking Shape: CJEU Judgments in GC and Others (C-136/17) and Google v CNIL (C-507/17), *GRUR International*, 69(4), (2020), 388.

rather from a decision that affirms such a claim. In such instances, the judgment typically contains comprehensive information about the case's parties and particulars, which, once made public, may subsequently be targeted for removal by one of the involved parties. Paradoxically, even if redacted, these details remain accessible to an indeterminate audience through online repositories of judicial records. These texts serve as integral components of legal education at various academic levels, forming the basis for scholarly dissertations and continuing to inform judicial deliberations across jurisdictions. Moreover, they often feature in public discourse, disseminated through newspapers and periodicals, and subject to analysis and debate by diverse segments of society over an extended period. This underscores the intricate interplay between legal proceedings and broader societal dynamics, necessitating careful consideration of the implications of RTBF rulings on the dissemination of legal information and the functioning of democratic institutions.

Invariably, the outcome is antithetical to the intended objective – wherein information, the deletion of which from the online domain constituted the primary aim of the petitioner's legal action, persists in proliferating across digital platforms, perpetuating its accessibility for an indeterminate span of time to an extensive audience. Despite potential amendments to regulatory texts and the explicit stipulation mandating closed-court deliberations for cases of this nature, ensuring confidentiality, the practical efficacy of such measures remains questionable. This underscores the inherent challenges in effectively enforcing the right to be forgotten, particularly in jurisdictions beyond the purview of the European Union (EU), where such data remains accessible through the original source's web portal. Moreover, the circumvention of geographical restrictions via virtual private networks (VPNs) or similar technological tools further complicates

the enforcement of data removal mandates, underscoring the intricate interplay between legal principles and technological capabilities in contemporary jurisprudence.

A consistent paradox pervades all instances within this category, a phenomenon underscored notably by Jure Globocnik (2020),[25] who cogently articulates the nuances: "Referred to commonly as the right to de-referencing, this pertains to a data subject's ability to petition a search engine operator to eliminate (de-reference) links from search results leading to websites containing personal data pertinent to them, particularly if such data are deemed inadequate, irrelevant, or obsolete in relation to their original purposes of collection and processing. It warrants emphasis that this prerogative is contingent upon searches conducted using the data subject's name; links may still manifest in search results when employing alternative search terms. Additionally, the visibility of a link in search results must be distinguished from the initial publication of information, obligating the data subject to exercise their right to be forgotten independently with regard to each. Moreover, notwithstanding the de-referencing of information from search results, its presence on the webpage of initial publication persists, unless the data subject successfully asserts their right to erasure vis-à-vis the web page publisher as well".

Expanding upon this observation, it is imperative to scrutinize the multifaceted ramifications of the right to de-referencing within the broader framework of data protection law. Globocnik's elucidation underscores the intricate balance between an individual's right to privacy and the public's right to access information. Moreover, the delineation of specific criteria for the exercise of this right, such as the inadequacy or irrelevance of data,

[25] Globocnik, Jure. The Right to Be Forgotten is Taking Shape: CJEU Judgments in GC and Others (C-136/17) and Google v CNIL (C-507/17), *GRUR International*, 69(4), (2020), 380.

introduces additional layers of complexity in its interpretation and application. Furthermore, the practical implications of this right extend beyond mere removal from search results, necessitating considerations regarding the enduring visibility of information on the original webpage and the potential recourse available to data subjects in compelling its deletion. This intricate interplay between legal principles and technological mechanisms underscores the evolving nature of data protection jurisprudence in the digital age, prompting ongoing scholarly discourse and legislative scrutiny.

A minor, albeit equally consequential, augmentation to the aforementioned considerations, from our vantage point, necessitates a recalibration of the procedural regulations governing trials within this particular domain. As the arbiter of a diverse array of disputes, the Judge grapples with the task of harmonizing the interests of the litigants, who contest against excessive public exposure of their grievances, and those of the society, which endeavors to uphold the impartiality of the judiciary. Addressing this predicament may hinge upon implementing measures to broaden the scope of closed-court proceedings and corresponding confidential adjudications across all legal proceedings entailing the execution of the Personal Rights Regime (PRR), encompassing both digital and traditional paper-based formats. Consequently, while the removal of information from the internet would indeed curtail access for residents within the European Union, its availability to individuals beyond these borders remains unaffected.

Expanding on this, the revision of procedural norms in trials concerning the enforcement of personal rights in the digital realm presents a multifaceted challenge. The judiciary finds itself at the nexus of conflicting interests, balancing the imperative of safeguarding privacy against the principle of open justice. In this context, enhancing the framework for closed-court sessions emerges as a potential solution, affording parties greater control

over the dissemination of sensitive information while preserving judicial transparency. Moreover, extending the applicability of confidential court decisions to all matters pertaining to the implementation of the PRR underscores a commitment to consistency and comprehensive protection of personal rights across legal proceedings.

Furthermore, the nuanced interplay between privacy rights and judicial transparency underscores the evolving landscape of digital jurisprudence. By exploring avenues to refine procedural rules, the legal system endeavors to adapt to the complexities of the digital age while upholding fundamental principles of fairness and accountability. However, it is imperative to recognize the global nature of information dissemination, wherein the removal of content from online platforms may not necessarily impede access outside the jurisdiction of the European Union. This underscores the intricate dynamics at play in reconciling competing interests within the realm of digital rights enforcement.

There exists a distinct cohort of scholars who adopt a cautious stance towards the ramifications brought forth by the Right to Be Forgotten (RTBF) within the established landscape of information utilization. While refraining from outright rejection of the applicability of this right, they exhibit a reserved demeanor towards its overarching legitimacy. This faction of researchers neither wholly advocates for nor refutes the fairness of its existence. One notable proponent of this viewpoint is David Erdos, whose scholarly inquiries, as evidenced in his statement from 2021, suggest a nuanced perspective. Erdos posits that data protection measures ought to facilitate individuals in exerting a certain degree of retrospective control over the dissemination of their online data, albeit with circumspection.[26]

[26] Erdos, David. The right to be forgotten' beyond the EU: an analysis of wider G20 regulatory action and potential next steps. *Journal of Media Law.* (2021) *https://*

Originating from the European Union (EU), the RTBF serves as a quintessential exemplar of this paradigm shift. Enshrined within Article 17 of the General Data Protection Regulation (GDPR), the RTBF delineates the entitlement of individuals "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" (European Parliament, 2016, p. 43).[27] This legislative provision underscores the evolving landscape of data protection jurisprudence and underscores the imperative for balancing individual privacy rights with the exigencies of data processing and dissemination within the digital realm.

Moreover, Erdos' scholarly intervention prompts a critical reevaluation of the ethical, legal, and societal implications of the RTBF. By interrogating the tension between individual autonomy and collective information access, Erdos challenges conventional assumptions about the contours of data privacy and accountability in the digital age. His nuanced perspective highlights the need for a deliberative approach towards crafting legislative frameworks that reconcile competing interests and safeguard fundamental rights.

Furthermore, the inclusion of the RTBF within the GDPR signifies a paradigmatic shift in data protection governance, marking a departure from conventional regulatory approaches towards a more rights-based framework. This legislative milestone underscores the growing recognition of individuals' rights to control the dissemination and retention of their personal data, thereby empowering them to assert agency over their digital identities.

www.scopus.com/record/display.uri?eid=2-s2.0-85101100662&origin=resultslist&sort=plf-f&src=s&st1=&st2=&sid=0216523637ab63ccc03b179735abd04f&sot=b&sdt=b&sl=36&s=TITLE-ABS-KEY%28right+to+be+forgotten%29&relpos=2&citeCnt=0&searchTerm=

[27] European Parliament. (2016). Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46. *Oficial Journal of the European Union* (OJ), 59(1–88), 294.

In conclusion, the cautious scholarly discourse surrounding the RTBF underscores the complexity of reconciling individual privacy rights with broader societal interests in information access and transparency. Erdos' nuanced perspective calls attention to the multifaceted nature of data protection challenges and underscores the imperative for a balanced and context-sensitive approach to regulatory intervention in the digital domain.

The territorial dimension of the Right to Be Forgotten (RTBF) warrants meticulous examination, given its current application limited to the jurisdiction of the European Union (EU), with the seminal ruling originating from the European Court of Justice in 2014. This assertion is predicated on the notion elucidated by Federico Fabbrini and Edoardo Celeste (2020),[28] positing the EU as a vanguard in global data protection endeavors. Consequently, as inferred from Meg Leta Jones' scholarly discourse (2018),[29] pivotal cases addressing multifaceted issues of reputation, identity, privacy, and memory in the Digital Age were adjudicated on the same day, yet yielded disparate outcomes on opposite sides of the Atlantic.

The first case, originating in Spain (Google Spain SL, Google Inc. v AEPD, Mario Costeja González), laid the cornerstone for the RTBF's application across the EU. Conversely, the second case, unfolding in the United States, involved American Idol contestants litigating against Viacom, MTV, and other defendants over online content resulting in their disqualification from the television show. While delving into the intricacies of litigation may seem tangential to our research, it is imperative to underscore that analogous scenarios elicited divergent judicial determinations in Europe and America.

[28] Fabbrini, Federico and Celeste, Edoardo. The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders. *German Law Journal* 21, (2020): 55.

[29] Jones, Meg Leta. "Ctrl + Z: The Right to Be Forgotten." *NYU Press* (2018), 11–12.

Despite the historical significance of the court ruling in the first case, which paved the way for RTBF enforcement in the EU, the protracted appeals process in the second case engendered a nuanced juxtaposition of the judicial stances adopted. Indeed, a more antagonistic interpretation of these contrasting decisions may emerge. Thus, aligned with Fabbrini's assertions (2020),[30] contemporary society operates within a global digital milieu transcending national borders. Consequently, individuals' right to data protection may be compromised even when search engine results are displayed in a country divergent from the data subject's domicile.

Furthermore, the transnational ramifications of RTBF adjudication underscore the imperative for harmonizing legal standards and procedural mechanisms across jurisdictions. As digital interconnectedness proliferates, the need for cross-border cooperation and mutual recognition of privacy rights becomes increasingly salient. In this vein, ongoing scholarly inquiry and interdisciplinary dialogue are pivotal in navigating the complex terrain of digital jurisprudence and safeguarding individuals' rights in an interconnected world.

Upon juxtaposing the challenges delineated on a global scale, the Ukrainian scenario, characterized by its ineffectual legislation and unconditional litigation practices, appears rather commonplace. As articulated by Cayce Myers (2014),[31] disparities between the European Union and the United States regarding confidentiality exemplify the multifaceted obstacles engendered by these emerging directives. The ongoing struggle for privacy

[30] Fabbrini, Federico and Celeste, Edoardo. The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders. *German Law Journal* 21, (2020), 64.

[31] Myers, Cayce. Digital Immortality vs. "The Right to be Forgotten": A Comparison of U. S. and E. U. Laws Concerning Social Media Privacy. *Revista Română de Comunicare şi Relaţii Publice*. No: 3XVI. (2014), 59.

rights and the Right to Be Forgotten (RTBF) underscores palpable tensions between individual rights and corporate interests, epitomizing the divergent trajectories of private law practice in the United States and Europe.

Simultaneously, the ubiquitous nature of the World Wide Web has fostered a heightened global discourse, accentuating legal and ideological disparities akin to tectonic shifts. This dichotomy between the ethos of free speech and self-expression and the imperative of legal regulation underscores the intricate dynamics at play in contemporary jurisprudence. Nonetheless, aligning with the perspective espoused by Mattias Goldmann (2020),[32] it is indisputable that RTBF rulings mark a seminal moment in the evolution of judicial discourse.

Indeed, the interplay between legal systems and cultural norms across continents underscores the imperative for nuanced approaches to privacy rights in an increasingly interconnected world. As legal frameworks continue to grapple with the complexities of digital jurisprudence, fostering cross-jurisdictional dialogue and harmonizing legal standards become imperatives in safeguarding individual rights and navigating the evolving landscape of global governance. Consequently, ongoing scholarly inquiry and interdisciplinary collaboration are pivotal in shaping the contours of digital rights and ensuring equitable access to justice in the digital age.

3. Anticipating future trends

In recent years, European trends in the development of the concept of digital silence have been shaped significantly by legislative efforts aimed at safeguarding individuals' privacy rights in the digital sphere. The General Data Protection Regulation (GDPR),

[32] Goldmann, Mattias. As Darkness Deepens: The Right to be Forgotten in the Context of Authoritarian Constitutionalism, *German Law Journal* 21. (2020), 46.

which came into effect in May 2018, stands as a pivotal piece of legislation influencing these trends. The GDPR grants individuals within the European Union (EU) a range of rights concerning the processing of their personal data, including the right to erasure, commonly known as the "right to be forgotten".

One prominent trend in the development of digital silence within the European context is the increasing recognition of individuals' rights to control their online presence and reputation. The right to be forgotten, enshrined in Article 17 of the GDPR, empowers individuals to request the deletion or removal of their personal data from online platforms under specific circumstances. This right reflects a broader societal shift towards recognizing the importance of privacy and data protection in the digital age.

Furthermore, European countries have seen a growing emphasis on accountability and transparency in data processing practices. Organizations subject to the GDPR are required to implement robust data protection measures, including mechanisms for obtaining consent, data minimization, and accountability. These requirements aim to enhance individuals' trust in the handling of their personal data and promote responsible data management practices among organizations.

Concurrently, a notable trend emerges wherein the significance of a timely and appropriate intervention by pertinent authorities to address issues arising from the utilization of the legal framework governing the Right to Be Forgotten (RTBF) in specific real-life scenarios and contentious legal contexts is being marginalized. Regrettably, the scholarly and theoretical assertions posited by detractors contesting the validity and subsequent practical enactment of the RTBF are wielded as a legal rationale for rejecting the pleas of plaintiffs, which squarely fall within the ambit of the legal provisions governing the application of the RTBF currently under scrutiny.

This phenomenon underscores the complex interplay between legal theory, practical application, and judicial decision-making within the realm of digital rights enforcement. As proponents of the RTBF advocate for its recognition and enforcement as a fundamental component of privacy protection in the digital age, detractors counter with arguments questioning its legitimacy and feasibility in practical application. Consequently, the response of relevant authorities to navigate these nuanced legal intricacies becomes paramount in ensuring equitable outcomes for all parties involved.

Moreover, delving deeper into the discourse surrounding the RTBF reveals a spectrum of divergent perspectives and interpretations among legal scholars and practitioners. While some advocate for a robust and expansive interpretation of the RTBF to afford individuals greater control over their digital footprint, others espouse a more circumspect approach, citing concerns regarding potential encroachments on freedom of expression and information dissemination. Thus, the resolution of disputes involving the RTBF necessitates a judicious balancing of competing rights and interests within the framework of established legal principles and precedents.

Furthermore, the evolving nature of digital rights jurisprudence underscores the need for ongoing dialogue and engagement among stakeholders to refine and adapt legal frameworks to the dynamic realities of the digital landscape. By fostering collaboration between legal scholars, practitioners, policymakers, and technology experts, it becomes possible to develop nuanced and effective strategies for navigating the complex intersection of law and technology. Ultimately, the adequacy of responses from relevant authorities in addressing issues pertaining to the RTBF will play a pivotal role in shaping the trajectory of digital rights enforcement and privacy protection in the digital era.

The lapse of time within the depicted scenarios has precipitated what has been aptly characterized by Jeffrey Rosen (2012)[33] as a regrettable misinterpretation; notably, the ruling in Google Spain did not establish a novel entitlement but rather elucidated the parameters of the right to erasure. Proponents aligned with this viewpoint contend that the actual implementation of a robust Right to Be Forgotten (RTBF) framework could potentially imperil the fundamental right to freedom of expression. This perspective is further expounded upon by Emily Adams Shoor (2014),[34] who argues that the adverse ramifications stemming from widespread adoption of the RTBF would outweigh its purported benefits. Furthermore, the German Association of Internet Economy contends that uniform standards should govern both online and offline publications, advocating for parity in regulatory treatment across digital and traditional media spheres.[35]

This discourse underscores the multifaceted nature of the ongoing debate surrounding the RTBF, which intersects complex legal, ethical, and societal considerations. Critics argue that the RTBF, if implemented without due consideration for its potential implications, could inadvertently stifle public discourse and impede the free flow of information essential to democratic societies. Conversely, proponents contend that the RTBF serves as a crucial mechanism for safeguarding individual privacy rights in an era characterized by ubiquitous digital surveillance and data collection.

Moreover, the nuanced legal and ethical considerations inherent in the RTBF debate necessitate a comprehensive examination

[33] Rosen, Jeffrey. The Right to Be Forgotten, *Stanford Law Review*, Symposium Issue, (2012), 88–95.

[34] Adams Shoor, Emily. Narrowing the Right to Be Forgotten: Why the European Union Needs to Amend the Proposed Data Protection Regulation, *Brooklyn Journal of International Law*, 2014, Vol 39, (2014): 487–521.

[35] Bundesverfassungsgericht, Recht of freie Entfaltung der Persönlichkeit. 1 (BvR 16/13), 19.

of its potential ramifications across various jurisdictions and contexts. While proponents advocate for the adoption of robust data protection measures to empower individuals to assert control over their personal information online, detractors caution against overreaching regulatory interventions that could unduly restrict legitimate forms of expression and access to information.

Additionally, the evolving nature of digital rights jurisprudence underscores the need for ongoing dialogue and collaboration among stakeholders to develop balanced and effective regulatory frameworks. By fostering interdisciplinary engagement between legal experts, policymakers, technology professionals, and civil society representatives, it becomes possible to navigate the complex terrain of digital rights enforcement while upholding fundamental principles of democracy, transparency, and individual autonomy.

Furthermore, as the RTBF continues to garner attention on the global stage, there is a growing imperative to address emerging challenges and ambiguities surrounding its implementation. This includes clarifying the scope of the RTBF, establishing clear procedural guidelines for its application, and striking a delicate balance between privacy protection and freedom of expression in the digital realm. Ultimately, the effective resolution of these issues will require concerted efforts from all stakeholders to reconcile competing interests and uphold the principles of justice and equity in the digital age.

This rationale possesses inherent cogency for several discernible reasons. When considering the removal of information from digital platforms such as online periodicals, it is imperative to acknowledge that analogous information dissemination may occur through traditional print media, necessitating comprehensive coverage by any court-ordered action – an endeavor fraught with practical challenges. For instance, envisioning a scenario wherein

identical information is concurrently published in electronic and paper formats, perhaps within the pages of a single publication amalgamating online and offline publishing activities, legislative coherence in addressing this issue becomes paramount. Essentially, any directive aimed at expunging information from online search engine results must logically extend to the obliteration of the same data from the entire print circulation – an undertaking deemed impracticable due to logistical constraints. Indeed, the sheer passage of time renders it physically unfeasible to identify every holder of a specific newspaper or magazine edition, thereby underscoring the formidable obstacles associated with achieving comprehensive removal of printed content.

This line of reasoning underscores the intricate interplay between digital and traditional media landscapes, necessitating a nuanced approach to regulatory interventions aimed at safeguarding individual rights in the digital age. As technological advancements continue to reshape the media ecosystem, policymakers face the formidable task of reconciling competing imperatives while preserving fundamental principles of justice and equity. Moreover, the evolving nature of information dissemination underscores the need for adaptable legal frameworks capable of addressing emerging challenges in a holistic manner.

Furthermore, the jurisdictional complexities inherent in cross-border data flows and digital content dissemination further compound the challenges associated with regulating information removal requests. In an interconnected global landscape, the reach of digital content transcends national boundaries, necessitating harmonized approaches to data protection and privacy regulation. However, achieving consensus on regulatory standards and enforcement mechanisms remains a formidable task, given the divergent legal traditions and cultural norms prevalent across jurisdictions.

Moreover, the proliferation of digital platforms and the democratization of content creation have democratized access to information while simultaneously exacerbating concerns related to data privacy and security. As individuals increasingly rely on digital platforms for communication, commerce, and information consumption, the need to safeguard personal data from unauthorized access and exploitation becomes paramount. In this context, the right to be forgotten emerges as a crucial mechanism for empowering individuals to assert control over their online identities and mitigate potential harms arising from the perpetual retention of digital footprints.

Additionally, the rise of algorithmic decision-making and automated content duration algorithms further complicates efforts to regulate online information dissemination and mitigate the impact of harmful or inaccurate content. As these technologies become increasingly pervasive, there is a growing imperative to establish transparent accountability mechanisms to ensure that algorithmic processes align with legal and ethical standards. This requires collaboration between policymakers, technologists, and civil society stakeholders to develop robust governance frameworks capable of promoting accountability, transparency, and fairness in digital content moderation. Thus, the interplay between digital and traditional media landscapes poses complex challenges for regulatory frameworks aimed at addressing issues of information removal and data privacy. By adopting a holistic approach that considers the multifaceted nature of contemporary media ecosystems, policymakers can develop adaptive regulatory frameworks capable of safeguarding individual rights while fostering innovation and digital inclusion.

Envisioning the personnel engaged in facilitating such a judicial decree and the logistical intricacies of information retrieval presents a formidable challenge. Moreover, even in the event of

purging all copies from library collections or periodical shelves, a complete and definitive "erasure" of information from the tangible world remains elusive. In such a scenario, the attainment of the applicant's objective through recourse to the right to be forgotten before the court becomes an exercise fraught with complexity and caution.

Indeed, if we extrapolate the unfolding circumstances to their logical conclusion, the next conceivable step would entail erasing the recollection of all individuals who have perused these publications and possess the potential to disseminate them – absent a legal injunction – thus assuming the role of information conduits. It becomes evident that in crafting potential scenarios, we risk delving into realms of absurd utopianism devoid of practical relevance, let alone feasibility or pragmatic implementation.

Expounding further on the practical implications of such hypothetical scenarios, it is essential to consider the broader societal and legal ramifications of attempts to erase or manipulate collective memory. Beyond the logistical challenges associated with purging information from physical archives and digital repositories, there exist profound ethical and philosophical questions concerning the nature of memory, truth, and historical preservation. Any attempt to selectively expunge or alter historical records raises fundamental questions about the integrity of historical narratives and the preservation of collective memory.

Moreover, the proliferation of digital technologies and the widespread dissemination of information through online platforms have exponentially compounded the challenges associated with information management and preservation. In an age characterized by the digitization of archival materials and the rapid circulation of information across digital networks, the task of controlling the flow of information and ensuring its accurate representation poses unprecedented challenges for legal and regulatory frameworks.

Furthermore, the erosion of privacy and the commodification of personal data by tech companies have raised concerns about the ethical implications of data retention and surveillance practices. As individuals increasingly rely on digital platforms for communication, commerce, and social interaction, the need to safeguard personal data from unauthorized access and exploitation becomes paramount. In this context, the right to be forgotten emerges as a vital mechanism for empowering individuals to exert control over their digital identities and mitigate the risks associated with prolonged data retention. So while the theoretical exploration of hypothetical scenarios involving the right to be forgotten may offer valuable insights into the complexities of information management and privacy protection, it is essential to temper such speculation with a pragmatic assessment of the practical challenges and ethical considerations involved. By fostering interdisciplinary dialogue and collaboration among legal scholars, ethicists, technologists, and policymakers, we can develop robust frameworks for addressing the multifaceted challenges posed by the digital age while upholding fundamental principles of justice, transparency, and individual rights.

These interconnected dialogues serve as the backdrop and narrative framework for the evolution and conceptualization of the Right to Be Forgotten (RTBF). They play a pivotal role in shaping the prevailing viewpoints and determining which perspectives are afforded visibility within the discourse. However they play a significant role in perpetuating preexisting disparities through the construction of knowledge within a "network society". In this context, researchers view networks as inherently pluralistic and all-encompassing representations of societal dynamics. Consequently, perspectives that are already marginalized or lack influence may become further

marginalized and disenfranchised within this networked environment (Rebekah Larsen, 2020).[36]

Expanding on this discourse, it becomes evident that the construction of knowledge within a networked society is deeply intertwined with power dynamics and structural inequalities. The dissemination and circulation of information within digital networks are often shaped by dominant narratives and vested interests, thereby reinforcing existing power structures and marginalizing alternative perspectives. Moreover, the proliferation of digital technologies has led to the emergence of new forms of gatekeeping and information control, further exacerbating inequalities in access to knowledge and representation.

The conceptualization of the RTBF within this discursive framework underscores the importance of critically examining the ways in which digital technologies mediate access to information and shape public discourse. By interrogating the underlying power dynamics and structural inequalities inherent in knowledge production and dissemination, researchers can contribute to a more nuanced understanding of the RTBF and its implications for individual rights and societal dynamics.

Furthermore, the notion of visibility within digital networks raises important questions about the ethics of information dissemination and the responsibility of platform providers and policymakers in shaping public discourse. As digital platforms increasingly serve as primary conduits for accessing information and engaging in public debate, there is a growing need for transparency, accountability, and inclusivity in the governance of online spaces. Efforts to address issues of visibility and representation must therefore be accompanied by broader initiatives aimed at promoting digital

[36] Larsen, Rebekah. Mapping Right to be Forgotten frames: Reflexivity and empirical payoffs at the intersection of network discourse and mixed network methods. *New media & society*. Vol. 22 (7), (2020), 1250.

literacy, fostering media plurality, and safeguarding democratic values in the digital age. The intertwined discourses surrounding the RTBF underscore the complex interplay between technology, power, and knowledge within contemporary society. By critically examining these discourses and their implications for information access and representation, researchers can contribute to a more equitable and inclusive digital landscape that upholds the principles of justice, transparency, and democratic participation.

Another notable trend is the evolution of case law and judicial interpretation surrounding the right to be forgotten. European courts, including the Court of Justice of the European Union (CJEU) and national courts, have adjudicated numerous cases involving the right to be forgotten, providing guidance on its scope, limitations, and application in practice. These legal developments have contributed to a more nuanced understanding of individuals' rights in the digital realm and have established precedents for future cases.

Moreover, there is an ongoing discussion about the extraterritorial application of the right to be forgotten beyond the borders of the EU. As data flows transcend national boundaries, questions arise regarding the enforcement of European data protection standards globally and the interaction between the GDPR and laws in other jurisdictions. European regulators and policymakers continue to grapple with these complex issues as part of broader efforts to promote a consistent and harmonized approach to data protection on a global scale. In the last several years, these challenges have begun to have an impact on EU democracy support policies. To some degree, they have diluted the European commitment to democracy and human rights globally.[37]

[37] Recent Trends in EU Democracy Support. Toward a New EU Democracy Strategy, Sep. 1, 2019, pp. 3–10.

Overall, European trends in the development of the digital silence concept underscore the region's commitment to upholding individuals' privacy rights and promoting responsible data governance practices in the digital age. Through legislative initiatives, judicial decisions, and ongoing dialogue, Europe seeks to strike a balance between protecting privacy rights and fostering innovation and economic growth in the digital economy.

5. Conclusions

The ongoing digital revolution sweeping through society not only signifies advancements in technology but also heralds a reconfiguration of sociolegal dynamics, thereby complicating the realization and protection of human rights in the face of infringements, challenges, or denial. In the contemporary landscape, the proliferation of online platforms presents novel challenges, reshaping communicative norms and engendering the emergence of new information cultures while reshaping existing ones.

Moreover, the past decade has been pivotal not only for Ukrainian jurisprudence but also for legal discourse across Europe, marking a transformative shift from normative to interpretive legal paradigms. This epochal transition underscores the maturation of legal thought and the institutionalization of progressive legal principles. Central to this evolution has been the systematic integration of the right to digital silence and the right to be forgotten into the fabric of legal institutions, transcending boundaries and reshaping legal frameworks.

The maturation of these rights from theoretical constructs to actionable legal principles has been instrumental in galvanizing legal discourse and catalyzing judicial activism aimed at their practical implementation. This process has not only led to the delineation of socio-ideological and judicial criteria but has also witnessed a

proliferation of judicial decisions aimed at operationalizing these rights in real-world contexts.

As these rights continue to gain traction and permeate legal landscapes, it is imperative to examine their multifaceted implications for society, governance, and individual freedoms. Furthermore, ongoing scholarly inquiry and interdisciplinary collaboration are essential to navigate the evolving legal terrain and ensure the equitable protection of rights in the digital age. Thus, the integration of digital rights into legal frameworks represents a seminal moment in the evolution of jurisprudence, signaling a paradigm shift towards a more equitable and rights-centric legal order.

In conclusion, the concept of digital silence represents a complex and multifaceted phenomenon with wide-ranging implications for law, society, and ethics in the European context. By exploring its legal foundations, societal dynamics, and ethical considerations, this paper has provided a comprehensive analysis of digital silence and its significance in shaping the evolving landscape of digital rights and responsibilities in Europe. Moving forward, addressing the challenges posed by digital silence will require collaborative efforts from policymakers, regulators, technology providers, civil society actors, and individuals to uphold fundamental rights, promote digital literacy, and foster a more transparent, equitable, and rights-respecting digital ecosystem in Europe and beyond.

Наукове видання

ЄВРОПЕЙСЬКІ ФУНДАМЕНТАЛЬНІ ЦІННОСТІ У ЦИФРОВУ ЕРУ

Монографія

(Англійською та українською мовами)

Редакторки:
Размєтаєва Юлія Сергіївна
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Підписано до друку 19.08.2024. Формат 60×84/16.
Ум. друк. арк. 18,5. Обл.-вид. арк. 13. Тираж 100 пр. Зам. № 158

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Свідоцтво суб'єкта видавничої справи ДК № 8024 від 05.12.2023

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Свідоцтво суб'єкта видавничої справи ДК № 5748 від 06.11.2017