



Research Article

## WILL CANCEL CULTURE PREVENT THE ADOPTION OF THE RIGHT TO BE FORGOTTEN?

Donald L. Buresh

Touro University Worldwide

### ARTICLE INFO

**Article History:**

Received 4<sup>th</sup> January, 2021

Received in revised form 25<sup>th</sup>

February, 2021

Accepted 18<sup>th</sup> March, 2021

Published online 28<sup>th</sup> April, 2021

**Key words:**

- Cancel Culture
- Carpenter v. United States
- European Union Charter of Fundamental Rights
- Google v. Costeja González
- Right to Be Forgotten
- Right to Privacy

### ABSTRACT

In the European Union, the right to be forgotten was recognized in *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* which was decided in 2014 when Google, Inc. was required to remove personal information by individuals that requested it. The criteria that the European Union Court of Justice established are that the data to be removed from a search engine should be inadequate, irrelevant, no longer relevant, or excessive. The question that naturally arises is whether the United States Supreme Court should or will also recognize the right to be forgotten. This paper attempts to answer this question by proposing that the right to be forgotten could be inaugurated in America if the Supreme Court holds that privacy is property. Justice Gorsuch's dissent in *United States v. Carpenter* suggests this possibility. This paper argues that such a holding is consistent with previous rulings regarding the right to privacy. However, a major stumbling block to legalizing the right to be forgotten is the cancel culture that is seemingly dominating the American scene. Cancel culture may delay the legal recognition of the right to be forgotten, but it will not prevent the right from being eventually recognized in statutory or case law.

Copyright©2021 Donald L. Buresh. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

### INTRODUCTION

This paper attempts to answer whether there should be a “right to be forgotten” in the United States. The right to be forgotten is an idea that was put into practice by the European Union.<sup>1</sup> The issue resulted from a desire by individuals to decide how to live their lives independent of electronic technology that perpetually or periodically collects data about their past without any ability to control the process.<sup>2</sup> In the United States, the right to be forgotten seems to be gaining momentum, particularly in New York State. The New York State bill A05323 entitled: “An act to amend the civil rights law and the civil practice law and rules, in relation to creating the right to be forgotten act” basically mirrors *Costeja González*, a European Court of Justice decision that will be discussed below.<sup>3</sup>

### Why the Right to Be Forgotten Matters

Does privacy exist anymore?<sup>4</sup> When information is recorded in a computer, whether or not it is personal information, it remains and is stored in a digital form essentially forever.<sup>5</sup> Seemingly years ago, before the proliferation of personal computers and cell phones, conversations were verbal and not recorded. Before the beginning of 2003, Facebook,<sup>6</sup> Instagram,<sup>7</sup> Skype,<sup>8</sup> Twitter,<sup>9</sup> or similar software applications did not exist. If verbal conversations were recorded at all, they were chronicled using sophisticated electronic equipment.<sup>10</sup> Except for violating the civilized rules of etiquette, most people were content in the knowledge that what was said to another person would disappear as the sounds of their voice dissipated into the air or became the topic of gossip by busybodies who had nothing better to do with their time. All this changed with the advent of computers and the Internet.

\*Corresponding author: Donald L. Buresh

Touro University Worldwide

<sup>1</sup>Julia Powles & Enrique Chaparro, *How Google Determined Our Right to Be Forgotten*, THE GUARDIAN, (February 18, 2015), <https://www.theguardian.com/technology/2015/feb/18/the-right-to-be-forgotten-google-search-and-paul-chadwick-should-we-forget-about-the-right-to-be-forgotten>?, THE GUARDIAN, (March 5, 2018), <https://www.theguardian.com/commentisfree/2018/mar/05/right-to-be-forgotten-google-europe-ecj-data-span>.

<sup>2</sup>Alessandro Manteler, *Corrigendum to "The EU Proposal for a General Data Protection Regulation and the Roots of the 'Right to Be Forgotten'"*, 29 COMPUTER L. AND SEC. REV. 5, (October 2013), [https://ac.els-cdn.com/S026736491300109X/1-s2.0-S026736491300109X-main.pdf?\\_tid=d11ae1fc-851a-4a1b-ac84-67ef2c0389ad&acdnat=1532803088\\_48ff203c0cf905edd8984c7d6b3699c](https://ac.els-cdn.com/S026736491300109X/1-s2.0-S026736491300109X-main.pdf?_tid=d11ae1fc-851a-4a1b-ac84-67ef2c0389ad&acdnat=1532803088_48ff203c0cf905edd8984c7d6b3699c).

<sup>3</sup>Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González (2014)

<sup>4</sup>Evan Schuman, *Does Privacy Exist Anymore? Just Barely.*, COMPUTERWORLD, (October 25, 2016), <https://www.computerworld.com/article/3135026/data-privacy/does-privacy-exist-anymore-just-barely.html>.

<sup>5</sup>Scott Maucione, *Can Digital Data Last Forever?*, FEDSCOOP, (November 8, 2013), <https://www.fedscoop.com/can-digital-data-last-forever/>.

<sup>6</sup>Sara Phillips, *A Brief History of Facebook*, THE GUARDIAN, (July 25, 2007), <https://www.theguardian.com/technology/2007/jul/25/media.newmedia>. Facebook officially began in February 2004 when Mark Zuckerberg, its founder, was an undergraduate majoring in psychology at Harvard University.

<sup>7</sup>Raisa Bruner, *A Brief History of Instagram's Fateful First Day*, TIME, (July 16, 2016), <http://time.com/4408374/instagram-anniversary/>. Instagram officially began on October 6, 2010.

<sup>8</sup>Doug Aamoth, *A Brief History of Skype*, TIME, (May 10, 2011), <http://techland.time.com/2011/05/10/a-brief-history-of-skype/>.

<sup>9</sup>Amanda MacArthur, *The Real History of Twitter*, In *Brief*, LIFEWIRE, (Updated April 27, 2018), <https://www.lifewire.com/history-of-twitter-3288854>. Twitter, Inc. was founded on March 21, 2006.

<sup>10</sup>25 *Products That Changed Recording*, SOUND ON SOUND (SOS), (November 2010), <https://www.soundonsound.com/reviews/25-products-changed-recording>.

As the Internet began its pervasive intrusion into everyday life, people naturally wanted to communicate with one another using their computers and cell phones.<sup>11</sup> At the beginning of the millennium, computers, cell phones, and other recording devices were relatively inexpensive.<sup>12</sup> These machines were also intensively marketed to the general public employing the marketing ploy that one could not thrive in the electronic age without them.<sup>13</sup> However, a caveat was a hidden agenda item that companies in their stampede conveniently glossed over to amass huge profits.<sup>14</sup> Everything that was ever said, typed, or written down using one of these machines was stored in a database somewhere.<sup>15</sup> Conversations that would previously dissolve into the atmosphere were now being documented for seemingly an eternity.<sup>16</sup> This simple consequence had dramatic ramifications to individual rights of privacy.<sup>17</sup> Anyone recorded using a computer or a cell phone could now be accessed at any time in the future, even decades later when individuals were different people.<sup>18</sup>

For example, suppose a 13-year old girl publishes a particularly inane comment using her Twitter account, meant only to be seen by a select few of her friends. What this young girl typed into her Twitter account is now recorded for all time. If we fast forward, say 20 years, this same message is accessible provided that one has access to her account. Assume that this young girl is interviewing for a position with a Fortune 100 company, and this company purchases access to her Twitter account. They can now see her inane comment, which might nix her ability to be hired by that company. If the 13-year old girl had never used Twitter but had merely said her inane comment verbally to her friends, the words would probably disappear from everyone's memory. The result would be that this girl's privacy and personal information would be maintained, and in all likelihood, this young woman would be hired in the job of her dreams.<sup>19</sup>

Controversy exists regarding the practicality of inaugurating a right to be forgotten because of the perceived vagueness in implementing such a right.<sup>20</sup> There are worries regarding the right's influence on First Amendment rights to freedom of speech, the comingling with the right to privacy, increasing Internet censorship, and probably more troubling, the rewriting of history.<sup>21</sup> Individuals who are proponents of the right to be forgotten argue that it is necessary to prevent unscrupulous people from exacting their revenge on others who at one time

in their lives were probably either naïve or innocently foolish.<sup>22</sup>

In light of contemporary cancel culture, the right to be forgotten takes on a whole new meaning because things individuals have done years or decades ago are accessible on the Internet for many years to come, if not indefinitely.<sup>23</sup> For example, consider the very recent case of Alexi McCammond, where this 27-year old editor was fired from *Teen Vogue* before she even started working for the magazine.<sup>24</sup> According to Downey, McCammond was about to take the editorial reins at *Teen Vogue* when several of her anti-Asian tweets that were ten years old were posted on social media.<sup>25</sup> McCammond complained that she received a 2/10 on a chemistry problem from an Asian teaching assistant in her offensive tweet.<sup>26</sup> Downey asked whether this case was a teaching moment for teenagers not to post allegedly racist statements or whether society should not "execute people in the public square for insensitive and dumb things they did as teenagers."<sup>27</sup> According to Wood, "the entire point of being a teenager is to make and correct the most mortifying errors of your life."<sup>28</sup> However, without a legally recognized right to be forgotten in the United States, stupid statements made by unthinking teenagers may have the ability to haunt a person well into adulthood and even into old age. The effect of not permitting people to remove statements or events from the Internet that are no longer relevant or material is to potentially relegate highly competent individuals to jobs menial they will simply be unable to contribute significantly to society. At least this is a possible conclusion that may likely come out of the McCammond fiasco.

## DISCUSSION OF RELEVANT LEGAL ISSUES

In this section, two international organizations' privacy principles, including the United States' privacy principles, will be listed. Second, what privacy means in the United States versus what it means, particularly in Europe, will be examined at some length. The reason is that whether a person has a right to be forgotten is directly related to the principles of privacy and his or her informational property rights regarding the data being collected.

### International and National Privacy Principles

The privacy principles adopted by the Organization for Economic Co-operation and Development (OECD), a European-based international economically-oriented body, and the Asia-Pacific Economic Cooperation (APEC), the Pacific Rim counterpart, will be listed in turn. Finally, privacy principles extracted from United States federal law will be outlined. Together, one can understand the history of personal information privacy internationally and in the United States.

<sup>11</sup> Amanda Lenhart, Mary Madden, Aaron Smith, & Alexandra Macgill, *Communications and Social Media*, PEW RESEARCH CENTER, (December 19, 2007), <http://www.pewinternet.org/2007/12/19/communications-and-social-media/>.

<sup>12</sup> *Cell Phone Cost Comparison Timeline*, TECHNOLOGY.ORG, (September 18, 2017), <https://www.technology.org/2017/09/18/cell-phone-cost-comparison-timeline/>.

<sup>13</sup> Sophia Fedeli & Katerina Eva Matsa, *Use of Mobile Devices for News Continues to Grow, Outpacing Desktops and Laptops*, PEW RESEARCH CENTER, (July 17, 2018), <http://www.pewresearch.org/fact-tank/2018/07/17/use-of-mobile-devices-for-news-continues-to-grow-outpacing-desktops-and-laptops/>.

<sup>14</sup> Douglas A. McIntyre & Thomas C. Frohlich, *10 Most Profitable Companies in the World*, USA TODAY, (October 24, 2015), <https://www.usatoday.com/story/money/personalfinance/2015/10/24/24-7-wall-st-most-profitable-companies/74501312/>.

<sup>15</sup> Andy Beckett, *The Dark Side of the internet*, THE GUARDIAN, (November 25, 2009), <https://www.theguardian.com/technology/2009/nov/26/dark-side-internet-freenet>.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Ron Johnson, *How One Stupid Tweet Blew Up Justine Sacco's Life*, THE NEW YORK TIMES, (February 12, 2015), <https://www.nytimes.com/2015/02/15/magazine/how-one-stupid-tweet-ruined-justine-saccos-life.html>. This is just one example of how a simple indiscretion can have life-changing consequences. Unfortunately, the number of examples that are available are legion. The example is not real, but the example listed in this citation is real.

<sup>20</sup> Peter Fleisher, *Foggy Thinking about the Right to Oblivion*, PETER FLEISHER'S BLOG, (March 9, 2011), <http://peterfleisher.blogspot.com/2011/03/foggy-thinking-about-right-to-oblivion.html>.

<sup>21</sup> Tessa Mayes, *We Have No Right to Be Forgotten Online*, THE GUARDIAN, (March 18, 2011), <https://www.theguardian.com/commentisfree/libertycentral/2011/mar/18/forgotten-online-european-union-law-internet>.

<sup>22</sup> Beirut, *Top 10 Ways to Take Revenge Using Social Media!*, THOUGHTPICK, (December 24, 2009), <http://blog.thoughtpick.com/2009/12/top-10-ways-to-take-revenge-using-social-media.html>.

<sup>23</sup> Charles Arthur, *What Is Google Deleting Under the 'Right to Be Forgotten' - and Why?*, THE GUARDIAN, (July 4, 2014), <https://www.theguardian.com/technology/2014/jul/04/what-is-google-deleting-under-the-right-to-be-forgotten-and-why>.

<sup>24</sup> Katie Robertson, *Teen Vogue Editor Resigns after Fury over Racist Tweets*, THE NEW YORK TIMES, (March 18, 2021), <https://www.nytimes.com/2021/03/18/business/media/teen-vogue-editor-alexi-mccammond.html>.

<sup>25</sup> Maureen Downey, *Racist Tweets Posted at 17 Cost Her a Dream Job at 27*, ATLANTIC JOURNAL-CONSTITUTION, (March 26, 2021), <https://www.ajc.com/education/get-schooled-blog/racist-tweets-she-posted-at-17-cost-her-a-dream-job-at-27/3EMHQFRICRBLJGMOL2ZCSOPMGY/>.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Graeme Wood, *America Has Forgotten How to Forgive*, THE ATLANTIC, (March 19, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/america-has-lost-ability-forgive/618336/>.

### **Organization for Economic Co-operation and Development Guidelines**

The OECD is a group of 36 member countries, including the United States, which became a member on April 12, 1961.<sup>29</sup> The organization was founded on December 14, 1960, and its purpose is to promote democratic government and free-market economies.<sup>30</sup> Its predecessor was the Organization for European Economic Co-operation which began in 1948 to administer the Marshall Plan, an American strategy to restore Europe to economic vitality after World War II.<sup>31</sup> On September 23, 1980, the OECD adopted the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (OECD Guidelines).<sup>32</sup> Although the OECD Guidelines are not binding on member countries, they outline privacy legislation and court opinions.<sup>33</sup> The principles are:<sup>34</sup>

- *Collection limitation principle* – Limits the collection of personal data by requiring that the data be collected lawfully;
- *Data Quality principle* – Personal data should relate to how it will be used, ensuring that it is accurate, complete, and current;
- *Purpose specification principle* – The purpose of why the data is collected should be specified before the information is collected;
- *Security safeguards principle* – Personal data should be reasonably protected against the risks of destruction, disclosure loss, modification, unauthorized access, and use;
- *Openness principle* – The development, practices, and policies regarding the collection of personal data should be readily available;
- *Individual participation principle* – Individuals have the right to obtain the personal data collected or confirm that such data exists; and
- *Accountability principle* – An organization that controls the data collection process should be accountable for complying with these principles.

### **Asia-Pacific Economic Cooperation Guidelines**

The APEC is the Pacific Rim counterpart to the OECD.<sup>35</sup> The United States has been a member of the APEC since November 6-7, 1989.<sup>36</sup> In 2004, the APEC adopted the following privacy principles regarding the use of personal information, only limited by local law:<sup>37</sup>

- *Notice*-Organizations that control personal information should provide easily accessible statements regarding their practices and policies;

- *Collection limitation*-Data collection of personal information should only relate to the purpose for which it is being collected;
- *Uses of personal information*- Personal information should be employed to achieve the goal of the data collection and no other purpose without the consent of the individual whose data is being collected;
- *Choice*-Individuals should be given access, affordable, and understandable statements so that they may reasonably decide how their personal information will be collected, disclosed, and used;
- *Integrity of Personal Information* – Personal data should be accurate, complete, and current to the degree necessary for its use;
- *Security safeguards* – Organizations that control personal information should protect the data against the risks of destruction, disclosure, loss, modification, unauthorized access, and use;
- *Access and correction* – Individuals should be able to confirm that an organization controlling personal information possesses personal information about them; and
- *Accountability* – Organizations that manage personal information should be accountable for complying with these principles;
- *Preventing harm* – The protection of personal information should prevent the data from being misused;

### **Seven United States Privacy Principles**

In the United States, privacy and security principles are stated somewhat differently but seem to be implied in a form that does not oblige US companies.<sup>38</sup> Some state and federal statutes identify different privacy duties and obligations that are ascribed to consumer information.<sup>39</sup> In general, these distinctions are concerned with the type of information and the kind of business.<sup>40</sup> Even so, these US laws reflect in different ways these seven privacy principles:<sup>41</sup>

- *Notice* – Companies can be required to give individuals notice as to the purpose why specific information is being gathered;
- *Choice* – Companies can provide people with the option of not disclosing their data to a third party;
- *Outward Transfer* – A firm can be required to apply the notice and choice principles above before communicating information to a third party;
- *Access* – Companies usually permit individuals to have access to their personal information;
- *Security* – Information security is essential to protect private information from misuse;
- *Data Integrity* – The accuracy and completeness of personal data may be required; and
- *Enforcement* – Companies may be required to have an enforcement mechanism in place to protect the privacy rights of a person.

<sup>29</sup>List of OECD Member countries - Ratification of the Convention on the OECD, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, (n.d.), <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>.

<sup>30</sup> Id.

<sup>31</sup>History, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, (n.d.), <http://www.oecd.org/about/history/>.

<sup>32</sup>OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, (n.d.), <http://www.oecd.org/sti/economy/oecdguidelinesontheProtectionofPrivacyandTransborderFlowsOfPersonalData.htm>.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup>History, ASIA-PACIFIC ECONOMIC COOPERATION, n.d., <https://www.apec.org/About-Us/About-APEC/History>.

<sup>36</sup>Member Economics, Asia-Pacific Economic Cooperation, (n.d.), <https://www.apec.org/About-Us/About-APEC/Member-Economics>.

<sup>37</sup>APEC Privacy Framework, ASIA-PACIFIC ECONOMIC COOPERATION, (August 2017, 2015), [https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-\(2015\)](https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-(2015)).

<sup>38</sup>ANDREW B. SERWIN, PETER F. MCLAUGHLIN, & JOHN T. TOMASZEWSKI, PRIVACY, SECURITY, AND INFORMATION MANAGEMENT: AN OVERVIEW (American Bar Association 2011).

<sup>39</sup> Id. at 10.

<sup>40</sup> Id.

<sup>41</sup> Id. at 10-11.

## What Privacy Means in the United States

In the United States, the right to privacy is neither stated in the United States Constitution nor any of the Amendments to the Constitution.<sup>42</sup> The right to privacy is a right that is implied from the rights that are expressed in the Constitution and by statutory law.<sup>43</sup> This means that the right to privacy is defined differently, depending on the individual that creates the definition.

### American Definition of Privacy

According to the Merriam-Webster's Dictionary, *privacy* is the "quality or state of being apart from company or observation" or the "freedom from unauthorized intrusion."<sup>44</sup> Black's Law Dictionary defines privacy to be: "[t]he right that determines the nonintervention of secret surveillance and the protection of an individual's information."<sup>45</sup> In *Black*, the definition is broken up into four parts. First, physical privacy is: "[a]n imposition whereby another individual is restricted from experiencing an individual or a situation."<sup>46</sup> Second, delusional privacy is "[t]he imposition of a restriction that is exclusive to an entity."<sup>47</sup> Third, informational privacy is: "[t]he prevention of searching for unknown information."<sup>48</sup> Finally, dispositional privacy is: "[t]he prevention of attempts made to get to know the state of mind of an individual."<sup>49</sup>

In *Griswold*, the Supreme Court first recognized the right to privacy.<sup>50</sup> In 1965, Estelle Griswold, the executive director of the Planned Parenthood League of Connecticut, and Dr. C. Lee Buxton, a physician, and professor at Yale, were arrested and fined \$100 for providing contraception advice to couples who were married.<sup>51</sup> The issue that was litigated in the case was whether a married couple had a constitutional right to privacy when they were advised regarding contraceptives.<sup>52</sup>

In 1890, Samuel D. Warren and Louis D. Brandeis wrote a Harvard Law Review article entitled: *The Right to Privacy*.<sup>53</sup> In the article, Warren and Brandeis defined privacy to be "the right to be left alone."<sup>54</sup>

### Fourth Amendment

The right to privacy is intimately associated with the Fourth Amendment, where it protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ...."<sup>55</sup> The Amendment demands that law enforcement officers obtain a warrant before searching.<sup>56</sup> Police officers must make a sworn statement before a neutral magistrate and describe in particularity "the place to be searched or things to be seized."<sup>57</sup> According to the Fourth Amendment, physical searches require law

enforcement to prove to a neutral magistrate that probable cause of criminality exists.<sup>58</sup> However, over the past 50 years and even before the Warren Court, the Supreme Court had carved out some exceptions, including a search incident to a lawful arrest, plain view search, consented search, stop and frisk search, automobile search, inventory search, and hot pursuit search.<sup>59</sup>

### Reasonable Expectation of Privacy Test

The reasonable expectation of privacy is a legal test used in determining whether the Fourth Amendment applies. It is related to the right to privacy but different from the right to privacy. The right to privacy is a much more expansive notion and is present in many legal systems. There are two kinds of expectations of privacy. First, there is an objective expectation of privacy or an expectation of privacy that society commonly recognizes and may be protected by law.<sup>60</sup> Second, a subjective expectation of privacy is a particular opinion by a person whether a specific circumstance is private.<sup>61</sup> For example, an individual has a reasonable expectation of privacy in public places that public or private institutions provide to ensure privacy. These places include hotel rooms<sup>62</sup>, public restrooms, portions of jails<sup>63</sup>, or a public phone booth.<sup>64</sup> One prominent exception to a reasonable expectation of privacy is an observation made during lawful aerial surveillance that does not use highly technical equipment.<sup>65</sup>

### Reasonable Expectation of Privacy Case Law

In *Olmstead*, the Supreme Court opined that private telephone conversations could be wiretapped without judicial ascent.<sup>66</sup> In essence, the Court held that there was no violation of Olmstead's Fourth Amendment rights. In *Katz*, the Court overruled *Olmstead* and expanded Fourth Amendment protection when the expectation was reasonable as well as to places where a person demonstrated a reasonable expectation of privacy.<sup>67</sup> In his concurring opinion, Justice Harlan created the reasonable expectation of privacy test for determining when a government action constituted a search.<sup>68</sup> In *Miller*, the Court found that Miller had no Fourth Amendment interest regarding his or her banking records because he had no legitimate expectation of privacy regarding the substance of

<sup>58</sup> *Id.*  
<sup>59</sup> *Chimel v. California*, 395 U.S. 752 (1969), <https://supreme.justia.com/cases/federal/us/395/752/> and *Arizona v. Gant*, 556 U.S. 332 (2009), <https://supreme.justia.com/cases/federal/us/556/332/#tab-opinion-1962911> (search incident to a lawful arrest exception); *Arizona v. Hicks*, 480 U.S. 321 (1987), <https://supreme.justia.com/cases/federal/us/480/321/#tab-opinion-1957005> (plain view exception); *Illinois v. Rodriguez*, 497 U.S. 177 (1990), <https://supreme.justia.com/cases/federal/us/497/177/#tab-opinion-1958395> (consent exception); *Terry v. Ohio*, 392 U.S. 1 (1968), <https://supreme.justia.com/cases/federal/us/392/1/#tab-opinion-1947459> (stop and frisk exception); *Carroll v. United States*, 267 U.S. 132 (1925), <https://supreme.justia.com/cases/federal/us/354/394/#tab-opinion-1941567> (automobile exception); *South Dakota v. Opperman*, 428 U.S. 364 (1976), <https://supreme.justia.com/cases/federal/us/428/364/#tab-opinion-1951901> (inventory search exception); and *Kentucky v. King*, 563 U.S. 452 (2011), <https://supreme.justia.com/cases/federal/us/563/452/#tab-opinion-1963504> (hot pursuit exception).

<sup>60</sup> *Expectation of Privacy*, LEGAL INFORMATION INSTITUTE, CORNELL UNIVERSITY, (n.d.), [https://www.law.cornell.edu/wex/expectation\\_of\\_privacy](https://www.law.cornell.edu/wex/expectation_of_privacy).

<sup>61</sup> *Id.*  
<sup>62</sup> Jason C. Miller, *Do Not Disturb: Fourth Amendment Expectations of Privacy in Hotel Rooms*, 7 SETON HALL CIR. REV. 2, (December 2010), [https://papers.ssrn.com/so3/papers.cfm?abstract\\_id=1718669](https://papers.ssrn.com/so3/papers.cfm?abstract_id=1718669).

<sup>63</sup> PAUL BERGMAN & SARA J. BERMAN-BARRETT, CRIMINAL LAW HANDBOOK: KNOW YOUR RIGHTS, SURVIVE THE SYSTEM 38, 63 (NOLO 18th ed. 2018).

<sup>64</sup> *Katz v. United States*, 389 U.S. 347, 361 (1967), <https://supreme.justia.com/cases/federal/us/389/347/#tab-opinion-1946919> (here, the plaintiff had a reasonable expectation of privacy while making a call in phone booth).

<sup>65</sup> *Dow Chemical v. United States*, 476 U.S. 227 (1986), <https://supreme.justia.com/cases/federal/us/476/227/#tab-opinion-1956603> (here, there was no reasonable expectation of privacy by the plaintiff when the government conducted aerial surveillance). Also see *Florida v. Riley*, 488 U.S. 445 (1989) (here, the Court held that police officials do not need a warrant to observe an individual's property from public airspace).

<sup>66</sup> *Olmstead v. United States*, 48 S.Ct. 564, 569 (1928), <https://supreme.justia.com/cases/federal/us/277/438/#tab-opinion-1932307>.

<sup>67</sup> *Katz*, *supra*, note 64 at 353.

<sup>68</sup> Matthew Tokson, *Knowledge and Fourth Amendment Privacy*, 3 NORTHWESTERN UNIV. L. REV. 1, (December 15, 2016), <https://scholarlycommons.law.northwestern.edu/nulr/vol11/iss1/3/>.

<sup>42</sup> Tim Sharp, *Right to Privacy: Constitutional Rights & Privacy Laws*, LIVE SCIENCE, (June 12, 2013), <https://www.livescience.com/37398-right-to-privacy.html>.

<sup>43</sup> *Id.*  
<sup>44</sup> *Privacy*, MERRIAM-WEBSTER'S DICTIONARY [ONLINE], (n.d.), <https://www.merriam-webster.com/dictionary/privacy>.

<sup>45</sup> *Privacy*, BLACK'S LAW DICTIONARY [ONLINE], n.d., <https://thelawdictionary.org/privacy/>.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965), <https://supreme.justia.com/cases/federal/us/381/479/#tab-opinion-1945663>.

<sup>51</sup> *Griswold v. Connecticut and the Right to Contraceptives*, FINDLAW, (n.d.), <https://family.findlaw.com/reproductive-rights/griswold-v-connecticut-and-the-right-to-contraceptives.html>.

<sup>52</sup> *Id.*

<sup>53</sup> Samuel D. Warren & Louis L. Brandeis, *The Right to Privacy*, 4 HARVARD L. REV. 5, (December 15, 1890), [http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy\\_brand\\_warr2.html](http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html).

<sup>54</sup> *Id.*  
<sup>55</sup> U.S. CONST. AMEND. IV.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

original checks and deposit slips that were not confidential.<sup>69</sup> The Court concluded that the government could lawfully obtain information revealed to a third party.<sup>70</sup>

In *Smith*, The Court applied Justice Harlan's test when Justice Blackmun observed that employing a pen register was not a Fourth Amendment search because there was no reasonable expectation of privacy.<sup>71</sup> In *Kyllo*, the Court again used the reasonable expectation of privacy test when the Court opined that using a Forward Looking Infra-Red (FLIR) thermal imaging device was a search because the use of the device violated *Kyllo's* reasonable expectation of privacy. In this case, in his argument for the majority, Justice Scalia opined that looking through a home with a highly technical device violated *Kyllo's* reasonable expectation of privacy.<sup>72</sup>

In *Jones*, the government violated *Jones's* reasonable expectation of privacy rights when it attached a Global Positioning System (GPS) tracking device to his car.<sup>73</sup> Like *Kyllo*, Justice Scalia noticed that a trespassory test needed not to exclude a reasonable expectation of privacy argument when there was no government trespass.<sup>74</sup> Unfortunately, Justice Scalia did not discuss the more significant privacy inferences that could have been made when warrantless GPS data are collected.<sup>75</sup> Justice Sotomayor aptly noticed that the privacy test's reasonable expectation was independent of the common-law trespassory test.<sup>76</sup> Even so, Justice Sotomayor speculated whether short-term GPS surveillance was constitutional by reasoning that a third party does not necessarily disclose such data.<sup>77</sup> She distinguished *Knotts*<sup>78</sup> from *Jones* when an individual is scrutinized seven days a week, 24 hours a day.<sup>79</sup> In his concurring opinion, Justice Alito observed that long-term GPS monitoring does infringe on an individual's reasonable expectation of privacy by arguing against the trespassory test.<sup>80</sup> Justice Alito felt that long-term surveillance might provide information about a person's beliefs and values that is not evident in the short-term.<sup>81</sup>

In *Riley*, the Court decided that searching a seizing the contents of a cell phone was unconstitutional because the cell phone owner has a reasonable expectation of privacy even though he or she is being arrested.<sup>82</sup> The contents of a cell phone do not threaten a law enforcement officer's safety.<sup>83</sup> The problem with searching the contents of a cell phone is that the search is like a police officer going through an individual's private papers in a person's bureau or cabinet without a warrant, thereby violating his or her reasonable expectation of privacy.<sup>84</sup>

<sup>69</sup>United States v. Miller, 425 U.S. 435, 440 (1976), <https://supreme.justia.com/cases/federal/us/425/435/#tab-opinion-1951689>.

<sup>70</sup> Id. at 443.

<sup>71</sup>Smith v. Maryland, 442 U.S. 735, 742 (1979), <https://supreme.justia.com/cases/federal/us/442/735/#tab-opinion-1953247>.

<sup>72</sup>*Kyllo v. United States*, 533 U.S. 27, 27 (2001), <https://supreme.justia.com/cases/federal/us/533/27/#tab-opinion-1960955>.

<sup>73</sup>United States v. Jones, 132 S.Ct. 945, 954 (2012), <https://supreme.justia.com/cases/federal/us/565/400/#tab-opinion-1963700>.

<sup>74</sup> Id. at 950.

<sup>75</sup> Id. at 954.

<sup>76</sup> Id. at 955.

<sup>77</sup> Id. at 957.

<sup>78</sup>United States v. Knotts, 460 U.S. 276 (1983), <https://supreme.justia.com/cases/federal/us/460/276/#tab-opinion-1954949>.

<sup>79</sup>*Jones*, *supra*, note 73 at 956.

<sup>80</sup> Id. at 958-59.

<sup>81</sup> Id. at 961-64.

<sup>82</sup>*Riley v. California*, 134 S.Ct. 2473, 2479

(2014), <https://supreme.justia.com/cases/federal/us/573/373/#tab-opinion-1970971>.

<sup>83</sup> Id. at 2481.

<sup>84</sup>Erin Fuchs, *Supreme Court Hears Case That Could Open Up 'Every American's Life To The Police Department'*, BUSINESS INSIDER, (April 29, 2014), <http://www.businessinsider.com/supreme-court-hears-riley-v-california-2014-4#ixzz319oi6ZXX>.

In *Carpenter*, the Court held that the government violated *Carpenter's* Fourth Amendment rights in procuring cell phone metadata without a warrant.<sup>85</sup> Before *Carpenter*, the government could obtain cellphone metadata by requesting it from the cellphone provider by proclaiming that the data was required for an investigation. The ruling in *Carpenter* was relatively narrow because it did not opine on whether the cellphone user or the cellphone provider owned the metadata.<sup>86</sup> Strangely, the cellphone user's property rights were not discussed in the majority opinion even though property rights were the basis of the Sixth Circuit's judgment.<sup>87</sup> The good news from *Carpenter* is contained Justice Gorsuch's dissent, where he stated that cell phone metadata is the property of cell phone owners.<sup>88</sup> His objection is insightful because if cell phone owners have a reasonable expectation of privacy, it is a small step to allowing individuals to control the data about themselves that others can see on the Internet.

## What Privacy Means in Europe

In the European Union, the American Court's reasonable expectation of privacy test is irrelevant. Instead, the EU uses Directive 95/46/EC when determining whether an individual's rights to privacy have been violated.<sup>89</sup> The significant differences are striking. In the United States, a citizen only has a reasonable expectation of privacy in their home.<sup>90</sup> With the introduction of Alexa, Amazon's so-called "smart speaker," a reasonable expectation of privacy in a home is quickly disappearing.<sup>91</sup> In contrast, the EU is traveling a different road. The EU is tipping the balance for an individual's rights of privacy against a search engine's economic interests and the public's right to know.<sup>92</sup>

## European Definition of Privacy

In contrast to the United States Constitution, the European Union Charter of Fundamental Rights (EUCFR) explicitly respects private and family life and protects personal data.<sup>93</sup> Title II Article 7 states that "[e]veryone has the right to respect for his or her private and family life, home and communications."<sup>94</sup> Title II Article 8 affirms that "[e]veryone has the right to the protection of personal data concerning him or her."<sup>95</sup> Article 8 further expounds on an individual's right to privacy by declaring that "[s]uch data must be processed fairly for specified purposes and by the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified."<sup>96</sup> Article 8 concludes by noting that "[c]ompliance

<sup>85</sup>*Carpenter v. United States*, 585 U.S. \_\_\_\_ (2018), <https://supreme.justia.com/cases/federal/us/585/16-402/#tab-opinion-3919270>.

<sup>86</sup> Id.

<sup>87</sup>United States v. Carpenter, 819 F.3d 880 (6th Cir. 2016), <https://casetext.com/case/united-states-v-carpenter-104>.

<sup>88</sup>United States v. Carpenter, Gorsuch's Dissent, <https://supreme.justia.com/cases/federal/us/585/16-402/#tab-opinion-3919269>, *supra*, note 85.

<sup>89</sup>EU Directive 95/46/EC is also known as the "Data Protective Directive." Its purpose is to protect individuals regarding the processing of their personal information. Although the Directive was adopted in 1995, it has been recently superseded by the General Data Protection Regulation that was adopted in April 2016, becoming enforceable in May 2018.

<sup>90</sup>What Is the "Reasonable Expectation of Privacy"?, FINDLAW, (n.d.), <https://injury.findlaw.com/torts-and-personal-injuries/what-is-the-reasonable-expectation-of-privacy-.html>.

<sup>91</sup>Amazon.com, *Set Up Your Amazon Echo (1st Generation)*, AMAZON PRIME, (n.d.), <https://www.amazon.com/gp/help/customer/display.html?nodeId=201601770>.

<sup>92</sup>Information society, privacy and data protection, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, (n.d.), <http://fra.europa.eu/en/theme/information-society-privacy-and-data-protection>.

<sup>93</sup> Id.

<sup>94</sup>EU Charter of Fundamental Rights: Article 7 - Respect for private and family life, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, (n.d.), <http://fra.europa.eu/en/charterpedia/article/7-respect-private-and-family-life>.

<sup>95</sup>EU Charter of Fundamental Rights: Article 8 - Protection of personal data, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, (n.d.), <http://fra.europa.eu/en/charterpedia/article/8-protection-personal-data>.

<sup>96</sup> Id.

with these rules shall be subject to control by an independent authority.<sup>97</sup>

When Articles 7 and 8 of Title II of the European Union Charter of Fundamental Rights is compared to the OECD Guidelines, it is evident that Articles 7 and 8 are consistent with these standards.<sup>98</sup> Title II Article 7 satisfies the data quality principle by ensuring that the data is accurate, complete, and current because it addresses a person's private family life.<sup>99</sup> This is the fundamental characteristic that an organization controlling personal information must demonstrate that it respects individual or family privacy rights and the data generated therein.<sup>100</sup> Title II Article 8 Section 1 is also consistent with the OECD data quality principle for the same reason.<sup>101</sup> Title II Article 8 Section 2 encompasses the collection limitation principle, the purpose specification principle, the openness principle, and the individual participation principle. Data must be processed fairly for specified purposes with either the consent of the person whose data is at issue.<sup>102</sup> Title II Article 8 Section 3 included the security safeguard principle and the accountability principle because accountability and safeguarding individual personal information are intertwined.<sup>103</sup> Thus, when taken together, Title II Articles 7 and 8 satisfy the OECD privacy guidelines.

#### **Google Spain SL and Google, Inc. v. Agencia Española de Protección de Datos and Mario Costeja González**

In *Google Spain SL, Google, Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* (2014), the Court of Justice of the European Union (CJEU) held that Google Spain SL and Google, Inc. must eradicate links to web pages that are freely accessible worldwide when individuals whose personal information is contained therein demand that the links to be removed.<sup>104</sup> The result of the CJEU ruling is that an internet search engine must address the demands of individuals who ask that links be eliminated to freely accessible web pages when a third party conducts a search based on the individual's name.<sup>105</sup> The eradication reasons include situations where the search results are facially inadequate, no longer relevant, or excessive given the amount of time that has elapsed.<sup>106</sup> If the search engine refuses to honor the request, an individual can petition the European Union (EU) courts to redress grievances.<sup>107</sup> The courts reserve the right to overrule the decision of the search engine.<sup>108</sup>

In 1998, *La Vanguardia*, a Spanish newspaper, published two announcements regarding a forced sale of properties from social security debts.<sup>109</sup> The announcements were posted per the Spanish Ministry of Labor and Social Affairs to entice people to bid on the properties in an auction.<sup>110</sup> The

announcements were also published on the newspaper's website.<sup>111</sup>

One of the properties belonged to Mario Costeja González, and he was specifically named in one of the announcements.<sup>112</sup> In November 2009, Costeja González requested that his name be no longer part of the Google database.<sup>113</sup> Costeja González wanted his name removed because the forced sale occurred nearly ten years earlier and was no longer relevant.<sup>114</sup> *La Vanguardia* denied the request because the newspaper believed that erasing Costeja González's data was improper. After all, the Spanish Ministry of Labor and Social Affairs had ordered that his name is published.<sup>115</sup>

In February 2010, Costeja González contacted Google Spain SL requesting that the search engine remove the links.<sup>116</sup> Google Spain SL alerted Google, Inc., asking for guidance.<sup>117</sup> Costeja González then filed a complaint with the Spanish Data Protection Agency (i.e., *Agencia Española de Protección de Datos*, "AEPD") requesting that *La Vanguardia*, and Google Spain SL or Google, Inc. delete the links.<sup>118</sup> On July 30, 2010, the AEPD rejected the complaint against *La Vanguardia* but endorsed the complaint against Google Spain SL and Google, Inc.<sup>119</sup> Google Spain SL and Google, Inc. appealed the National High Court decision of Spain (i.e., *Audiencia Nacional*, "AN").<sup>120</sup> Google Spain SL and Google, Inc. argued that.<sup>121</sup>

- EU Directive 95/46/EC did not have jurisdiction over Google, Inc.;
- No data processing occurred;
- If data processing did occur, neither Google, Inc. nor Google Spain SL were data controllers; and
- Costeja González had no right to ask the search engine to remove the offending links.

The AN issued a stay pending a preliminary decision from the CJEU based on EU Directive 95/46/EC.<sup>122</sup> In February 2013, the case was heard by the CJEU, and on May 13, 2014, the CJEU published its judgment.<sup>123</sup>

The CJEU concluded that Google Spain SL and Google, Inc.'s reasons were not compelling.<sup>124</sup> The Court opined that Google, Inc. was responsible for removing Costeja González's data. Costeja González's property's forced sale should be electronically forgotten because the information was no longer relevant.<sup>125</sup> The CJEU also held that Article 14(a)<sup>126</sup> of EU Directive 95/46/EC as related to Articles 7(e)<sup>127</sup> and 7(f)<sup>128</sup> permitted Costeja González to object to the search engine keeping his data online.<sup>129</sup> Furthermore, Article 12(b)<sup>130</sup>

<sup>97</sup> Id.  
<sup>98</sup> 30 years after: the impact of the OECD Privacy Guidelines, JOINT ICCP-WPISP ROUNDTABLE, (March 10, 2010), <https://www.oecd.org/sti/ieconomy/44946479.doc>.

<sup>99</sup> Id.  
<sup>100</sup> Id.  
<sup>101</sup> Id.  
<sup>102</sup> Id.  
<sup>103</sup> Id.  
<sup>104</sup> Press Release 7014: An internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties, COURT OF JUSTICE OF THE EUROPEAN UNION, (May 13, 2014), <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf>.

<sup>105</sup> Id.  
<sup>106</sup> Id.  
<sup>107</sup> Id.  
<sup>108</sup> Id.  
<sup>109</sup> Id.  
<sup>110</sup> Id.

<sup>111</sup> Id.  
<sup>112</sup> Id.  
<sup>113</sup> Id.  
<sup>114</sup> Id.  
<sup>115</sup> Id.  
<sup>116</sup> Id.  
<sup>117</sup> Id.  
<sup>118</sup> Id.  
<sup>119</sup> Id.  
<sup>120</sup> Id.  
<sup>121</sup> Id.  
<sup>122</sup> Id.  
<sup>123</sup> Id.  
<sup>124</sup> David Streitfeld, *European Court Lets Users Erase Records on Web*, THE NEW YORK TIMES, (May 13, 2014), <https://www.nytimes.com/2014/05/14/technology/google-should-erase-web-links-to-some-personal-data-europes-highest-court-says.html>.  
<sup>125</sup> Id.  
<sup>126</sup> EU Directive 95/46/EC - The Data Protection Directive: Chapter II - General Rules on the Lawfulness of the Processing of Personal Data, DATA PROTECTION COMMISSION, (n.d.), <https://www.dataprotection.ie/docs/EU-Directive-95-46-EC-Chapter-2/93.htm>.  
<sup>127</sup> Id.  
<sup>128</sup> Id.  
<sup>129</sup> Id.  
<sup>130</sup> Id.

allowed Costeja González to ask the search engine to remove his data.<sup>131</sup>

The decision was significant because it balances an individual's right to privacy and the EU's data protection laws against the public's right to know.<sup>132</sup> What the ruling did not do is remove the data instantaneously without due process issues being considered.<sup>133</sup> The opinion also distinguished between public and private individuals.<sup>134</sup> In general, the CJEU held that individual privacy rights supersede a search engine operator's economic interests, including the public's right to know.<sup>135</sup> The CJEU aptly observed that had Costeja González been a public figure, the balance would have tilted in the other direction.<sup>136</sup>

### Google's Experience Because of the Decision

After the case concluded, Google published an online form whereby a European Union citizen or a European Free Trade Association national could ask Google to remove links, presuming that the data was inadequate, irrelevant, no longer relevant, or excessive.<sup>137</sup> On the first day that the form was published, Google received over 12,000 requests to remove specific links from the company's search engine.<sup>138</sup> The consumer advocacy group Consumer Watchdog subsequently invited Google to extend these European rights to users in the United States by filing a complaint with the Federal Trade Commission.<sup>139</sup> However, a similar holding in the United States by the Supreme Court or similar legislative action by Congress seems dim because of the possibility of violating the First Amendment.<sup>140</sup>

## ISSUES WITH AMERICAN PRIVACY LAWS

The issue with the current state of privacy laws is that there is no federal privacy law in force. In California, the California Consumer Privacy Act, as amended by the California Privacy Rights Act, recently became law.<sup>141</sup> Nevada and Virginia also passed privacy laws.<sup>143</sup> In protecting biometric data, Illinois currently has the most comprehensive biometric privacy law on the books.<sup>145</sup> Texas and Washington are the two states that have biometric privacy laws.<sup>146</sup> Other states

are now considering passing privacy laws or biometric privacy laws, respectively.<sup>148</sup> <sup>149</sup> <sup>150</sup>

Regarding privacy, there is the 1890 definition of privacy in America by Warren and Brandeis in their Harvard Law Review, where privacy was defined as "the right to be left alone."<sup>151</sup> The United States citizens possess a reasonable expectation of privacy test as prescribed by Justice Harlan in *Griswold*.<sup>152</sup> There is a legion of Supreme Court cases that expand how the reasonable expectation of privacy test should be applied.<sup>153</sup> From the Constitution, America has the Fourth Amendment that states that searches and seizures should be reasonable where probable cause exists. A neutral magistrate must issue a warrant. The items or persons to be searched or seized must be described with particularity.<sup>154</sup> The assumption behind all of these tools is property ownership.

## Property and Privacy

Privacy is property.<sup>155</sup> According to Warren and Brandeis, privacy deals with the ownership of property.<sup>156</sup> Before *Katz*, privacy was affiliated with places and not people.<sup>157</sup> After *Katz*, privacy became a characteristic of a person, and what were that person's reasonable expectations about whether his or her activities were private actions.<sup>158</sup> In *Katz*, the defendant was in a telephone booth making a telephone call when the government spied on him.<sup>159</sup> The Court opined that *Katz* had a reasonable expectation of privacy because telephone booths were completely enclosed.<sup>160</sup> He was surrounded by three walls and two small folding doors in a narrow building that could only comfortably fit a single individual.<sup>161</sup> The Fourth Amendment states that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . ." <sup>162</sup> An individual's houses, papers, and effects are either real or personal property, respectively.<sup>163</sup> The 13th Amendment abolished slavery where a natural could be legally considered property unless slavery or indentured servitude is punishment for a crime.<sup>164</sup>

## Principles of Privacy Revisited

The United States is a signatory to the principles of privacy as expressed by the Organization of Economic Co-operation and Development and the Asia-Pacific Economic Cooperation organizations.<sup>165</sup> The OECD and the APEA have carefully explained the principles that form the foundation of individual privacy regarding personal information.<sup>166</sup> The word "economic" is contained in the names of both organizations.<sup>167</sup>

<sup>131</sup> Id.

<sup>132</sup> Press Release 7014, *supra*, note 104.

<sup>133</sup> Streitfeld, *supra*, note 124 at 80.

<sup>134</sup> Id. at 97.

<sup>135</sup> Id. at 80.

<sup>136</sup> Id. at 80.

<sup>137</sup> Jennifer Golbeck, *Google to Remove Revenge Porn from Search Results*, FUTURETENSE, (June 19, 2015), [http://www.slate.com/blogs/future\\_tense/2015/06/19/google\\_announces\\_plan\\_to\\_remove\\_revenge\\_porn\\_from\\_search\\_results.html](http://www.slate.com/blogs/future_tense/2015/06/19/google_announces_plan_to_remove_revenge_porn_from_search_results.html).

<sup>138</sup> Rose Powell, *Google Receives 12,000 Requests to Be 'Forgotten' on First Day*, THE SUNDAY MORNING HERALD, (June 01, 2014), <https://www.smh.com.au/technology/google-receives-12000-requests-to-be-forgotten-on-first-day-20140601-zru3g.html>.

<sup>139</sup> James Eng, *Consumer Watchdog: Google Should Extend 'Right to Be Forgotten' to U.S.*, NBC NEWS, (May 31, 2014), <https://www.nbcnews.com/tech/internet/consumer-watchdog-google-should-extend-right-to-be-forgotten-u-s-n388131>.

<sup>140</sup> Rebecca Heilweil, *How Close Is An American Right-To-Be-Forgotten?*, FORBES, (March 4, 2018), <https://www.forbes.com/sites/rebeccaheilweil/2018/03/04/how-close-is-an-american-right-to-be-forgotten/#5a6c15bf626e>.

<sup>141</sup> Donald L. Buresh, *A Comparison between the European and American Approaches to Privacy*, 6 INDONESIAN J. OF INT. AND COMP. L. 253, (2019).

<sup>142</sup> *California Privacy Rights Act: An Overview*, PRIVACY RIGHTS CLEARINGHOUSE, (December 10, 2020), <https://privacyrights.org/resources/california-privacy-rights-act-overview#:~:text=The%20California%20Privacy%20Rights%20Act%20clarifies%20that%20people%20can%20opt%20personal%20information%20to%20third%20parties.&text=The%20California%20Privacy%20Rights%20Act%20expands%20this%20to%20cover%20data,includes%20a%20username%20and%20password>.

<sup>143</sup> *The Nevada Privacy Law (SB-220) vs. The California Consumer Privacy Act (CCPA)*, ONETRUST, (September 17, 2019), <https://www.onetrust.com/blog/the-nevada-privacy-law-sb-220-vs-the-california-consumer-privacy-act-ccpa/>.

<sup>144</sup> Sarah Rippy, *Virginia Passes the Consumer Data Protection Act*, INT. ASSOC. OF PRIV. PROF., (March 03, 2021), <https://iapp.org/news/a/virginia-passes-the-consumer-data-protection-act/>.

<sup>145</sup> BIOMETRIC INFORMATION PRIVACY ACT, 740 ILCS 14/, 740 ILCS 14/10(2008),

<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3004&ChapterID=57>.

<sup>146</sup> CAPTURE OR USE OF BIOMETRIC IDENTIFIER ACT, (2009),

<https://statutes.capitol.texas.gov/Docs/BC/htm/BC.503.htm>.

<sup>147</sup> BIOMETRIC IDENTIFIERS ACT, Chapter 19.375 RCW,

(2017), <https://app.leg.wa.gov/RCW/default.aspx?cite=19.375&full=true>.

<sup>148</sup> Sarah Rippy, *US State Comprehensive Law Comparison*, INT. ASSOC. OF PRIV. PROF., (March 08, 2021), <https://iapp.org/resources/article/state-comparison-table/>.

<sup>149</sup> Karen Lee Lust, Michael Galibois, & Jacqueline Lefebvre, *New York Proposes a New Biometric Privacy Act*, TECHNOLOGY LAW DISPATCH, (January 21, 2021),

<https://www.technologylawdispatch.com/2021/01/privacy-data-protection/new-york-proposes-a-new-biometric-privacy-act/>.

<sup>150</sup> Seyfarth Shaw, *Maryland Joins Growing Number of States Introducing Biometric Information Privacy Bills with Potential to Spur Class Action Litigation*, JDSUPRA, (February 24, 2021), <https://www.jdsupra.com/legalnews/maryland-joins-growing-number-of-states-3182422/>.

<sup>151</sup> Samuel D. Warren & Louis L. Brandeis, *supra*, note 53.

<sup>152</sup> *Griswold*, *supra*, note 50.

<sup>153</sup> *Olmstead*, *Katz*, *Miller*, *Smith*, *Kyllo*, *Jones*, *Riley*, and *Carpenter*, *supra*, notes 64, 62, 71, 72, 73, 82, and 85 respectively.

<sup>154</sup> U.S. CONST. AMEND. IV.

<sup>155</sup> Lawrence Lessig, *Privacy as Property*, 69 SOCIAL RESEARCH 1, (2002), [https://www.jstor.org/stable/40971547?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/40971547?seq=1#page_scan_tab_contents).

<sup>156</sup> Samuel D. Warren & Louis L. Brandeis, *supra*, note 53.

<sup>157</sup> *Olmstead*, *supra*, note 66.

<sup>158</sup> *Katz*, *supra*, note 64.

<sup>159</sup> Id.

<sup>160</sup> Id.

<sup>161</sup> Id.

<sup>162</sup> U.S. CONST. AMEND. IV.

<sup>163</sup> Id.

<sup>164</sup> U.S. CONST. AMEND. XIII.

<sup>165</sup> *OECD Guidelines and APEC Privacy Framework*, *supra*, note 32.

<sup>166</sup> Id.

<sup>167</sup> Id.

By implication, privacy is integrally related to business and economic interests.<sup>168</sup> The privacy principles discussed by Serwin *et al.* are seemingly independent of monetary gain.<sup>169</sup> The United States is fundamentally a governmental organization whose primary purpose is to promote commerce.<sup>170</sup> Thus, even though the privacy principles in Serwin *et al.* do not explicitly address commercial transactions, the elephant in the room seems to be hiding in plain sight.

### Costeja González Revisited

In revisiting *Costeja González*, this time, the analysis of the facts of the case will focus on Justice Harlan's reasonable expectation of privacy test. In 1998, the Spanish newspaper, *La Vanguardia*, published two announcements about selling properties to satisfy social security debts.<sup>171</sup> The Spanish Ministry of Labor and Social Affairs published the announcements to encourage people to bid on the properties at auction.<sup>172</sup> The announcements were also posted on the newspaper's website.<sup>173</sup> Although Costeja González possessed some property rights, the mortgage company's property rights superseded Costeja González's rights. His real property was being foreclosed, and the Spanish Ministry of Labor and Social Affairs attempted to find buyers.<sup>174</sup> The property was likely sold at auction.<sup>175</sup> When applying the reasonable expectation of privacy test, in 1998, Costeja González clearly possessed no right of privacy because the property was being sold at auction. If there was a privacy issue here, it should be recalled that the advertisements were public documents.<sup>176</sup> In the United States, the scales are tipped toward economic interest and the public's right to know rather than personal information privacy. When applying the reasonable expectation of privacy test, Costeja González had no reasonable expectation of privacy. This means that the Court would probably conclude that *La Vanguardia* had no obligation to remove its posting of the advertisement on the Internet even though the advertisement was approximately ten years old.

What probably would have happened to Google Spain SL and Google, Inc. If the two companies' economic interests had been addressed and the reasonable expectation of privacy test been employed? The announcements were public documents.<sup>177</sup> Google Spain SL and Google, Inc. would be innocent third-parties faithfully performing their economic function of delivering to people information contained on the Internet. The two organizations would be actively promoting their financial interests.<sup>178</sup> In *Dodge v. Ford*, a corporation's purpose is to maximize shareholder value,<sup>179</sup> or from an economic perspective, to maximize profits, or equivalently, to minimize costs.<sup>180</sup> Costeja González possessed no reasonable expectations of privacy from the Supreme Court's view because of the bankruptcy announcements' public nature.<sup>181</sup> This means that in the United States, *Costeja González* would

probably have been decided in favor of Google Spain SL and Google, Inc.

Therefore, in the United States, under American law, Costeja González would probably have lost.

### Appropriate Resolutions

Despite this rather dismal analysis, there is a single shining ray of hope that could enlighten America's privacy landscape. Lao Tzu stated that a person's greatest strength is also his or her greatest weakness.<sup>182</sup> In other words, hope stems from Justice Gorsuch's dissent in *Carpenter*.<sup>183</sup> In his dissent, Justice Gorsuch insightfully observed that had the Court did not adequately address Carpenter's property rights regarding cell phone metadata when a cell phone was not being used to make or receive a call.<sup>184</sup> The idea is that if an individual possessed property rights regarding personal information, there is the distinct possibility of ensuring that the courts would come to the same result as in *Costeja González*.

### The Fair Credit Reporting Act of 1970

As decided by the EUCJ in *Costeja González*, Google Spain SL and Google, Inc. were instructed to remove personal information from the search engine that the data was inadequate, irrelevant, no longer relevant, or excessive.<sup>185</sup> The regulation of private information is also specified in the Fair Credit Reporting Act of 1970 (FCRA).<sup>186</sup> When a credit reporting agency adjusts an individual's credit report entries, the service is free to the consumer.<sup>187</sup>

An individual wants to contest a derogatory on his or her credit report. The person writes a letter to the credit reporting agency denying the negative data in his or her credit report.<sup>188</sup> The credit reporting agency has 30 days either to verify that the derogatory is accurate and should remain on the individual's credit report or to delete the derogatory from the credit report because the information is false or because the merchant that created the derogatory failed to respond to the credit reporting agency regarding its correctness within the 30-day window.<sup>189</sup> The credit reporting agency is acting as a so-called "magistrate," determining whether a derogatory stays or goes.<sup>190</sup> Furthermore, the credit reporting agency is not legally liable for the existence of the derogatory.<sup>191</sup> The only time that a credit reporting agency is legally liable is if it fails to remove a derogatory when it is legally obliged to do so.<sup>192</sup> Individuals are responsible for ensuring that their credit reports are accurate.<sup>193</sup>

### The Digital Millennium Copyright Act of 1998

The Digital Millennium Copyright Act (DMCA) of 1998 was signed into law by Pres. Clinton on October 2, 1998.<sup>194</sup> The Act made the United States of America a signatory to the two 1996 World Intellectual Property Organization (WIPO) treaties, namely, the WIPO Copyright Treaty and the WIPO

<sup>168</sup> Id.

<sup>169</sup> Serwin et al., *supra*, note 38.

<sup>170</sup> Steve Greechie, *Role of Government in Business*, CHRON, (Updated June 30, 2018), <https://smallbusiness.chron.com/role-government-business-803.html>.

<sup>171</sup> Press Release 7014, *supra*, note 104.

<sup>172</sup> Id.

<sup>173</sup> Id.

<sup>174</sup> Id.

<sup>175</sup> Id.

<sup>176</sup> *Advertising FAQ's: A Guide for Small Business*, FEDERAL TRADE COMMISSION, (April 2001), <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>.

<sup>177</sup> Id.

<sup>178</sup> Press Release 7014, *supra*, note 104.

<sup>179</sup> *Dodge v. Ford*, 204 Mich. 459 (1919), <https://casetext.com/case/dodge-v-ford-motor-co>.

<sup>180</sup> PAUL KRUGMAN & ROBIN WELLS, *ECONOMICS* (Worth Publishers 4th ed. 2015).

<sup>181</sup> *Advertising FAQ's*, *supra*, note 166.

<sup>182</sup> LAO TZU, TAO TE CHING (CreateSpace Independent Publishing 2016).

<sup>183</sup> *Carpenter v. United States*, *supra*, note 85.

<sup>184</sup> Id.

<sup>185</sup> Press Release 7014, *supra*, note 104.

<sup>186</sup> *A Summary of Your Rights Under the Fair Credit Reporting Act*, FEDERAL TRADE COMMISSION, (n.d.), <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>.

<sup>187</sup> Id.

<sup>188</sup> Id.

<sup>189</sup> Id.

<sup>190</sup> Id.

<sup>191</sup> Id.

<sup>192</sup> Id.

<sup>193</sup> Id.

<sup>194</sup> *United States Copyright Office Summary*, THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998, <https://www.copyright.gov/legislation/dmca.pdf>.



Performances and Phonograms Treaty.<sup>195</sup> Section 512(c), also known as the safe harbor provision of the DMCA, specified an exemption for internet service providers (ISPs) or online service providers (OSPs) against copyright infringement liability given that:<sup>196</sup>

- An ISP/OSP does not receive any financial benefit arising from the infringing activity;
- An ISP/OSP does not have actual knowledge, nor be aware of the facts and circumstances surrounding the hosting of the infringing material;
- When given expressed written notice by a copyright holder, an ISP/OSP removes the alleged infringement quickly; and
- Under the “red-flag” test, if an ISP/OSP has subjective knowledge of an infringement, and a reasonably prudent person would consider the activity infringing, the ISP or OSP must expeditiously take down the alleged violation.

The alleged infringer has the right to contest the removal of the alleged infringement.<sup>197</sup> The ISP/OSP is required to address the counter allegations of the alleged offender promptly.<sup>198</sup> If the ISP/OSP complies with all of these rules, it is safe from legal liability.<sup>199</sup>

### **Comparison of Private Actors**

Notice how credit reporting agencies are required by American law to behave and how the law instructs ISPs/OSPs to act. Observe that major corporations are involved in both instances, and their economic interests are subordinate to individual property rights. When considering the FCRA, American citizens’ personal information property that is contained in a credit report tips the scales against the economic interests of credit reporting agencies.<sup>200</sup> Regarding the DMCA, the copyright holders’ property rights are superior to the business interests of the ISPs/OSPs.<sup>201</sup> In both cases, an effective procedure is involved to ensure that property rights are protected.

In *Costeja González*, the EUCJ outlined a similar procedure for Google Spain SL and Google, Inc. to follow. Here, the EUCJ held that Google Spain SL and Google, Inc. must eradicate links to web pages that are freely accessible worldwide when individuals whose personal information is contained therein demand that the links to be removed, provided that the data was inadequate, irrelevant, no longer relevant, or excessive.<sup>202</sup> If an individual disagrees with a search engine’s decision, they are free to seek legal redress.<sup>203</sup> Thus, the procedure described by the EUCJ has many procedural steps in common with processes delineated by the FCRA and the DMCA. The burden to the private information controller is small relative to the harm experienced by the person who is the personal information subject.<sup>204</sup>

<sup>195</sup> Id.  
<sup>196</sup> 17 U.S.C. § 512 - Limitations on liability relating to material online. Section 512(c) specifically deals with under what conditions an internet service provider or an online service provider is exempt from liability.  
<sup>197</sup> Id.  
<sup>198</sup> Id.  
<sup>199</sup> Id.  
<sup>200</sup> *A Summary of Your Rights Under the Fair Credit Reporting Act*, *supra*, note 176.  
<sup>201</sup> 17 U.S.C. § 512, *supra*, note 186.  
<sup>202</sup> *Press Release 7014*, *supra*, note 104.  
<sup>203</sup> Id.  
<sup>204</sup> When balancing one harm against another harm, the policy of the law is to rule in favor of party that experiences the most harm. In this case, an individual is the party that feels the greatest harm.

## **The Cancel Culture Phenomenon**

In the last several years with George Floyd’s death, the civil unrest in the Summer of 2020, and the Covid-19 global pandemic, a seemingly unique phenomenon has arisen that may nix the possibility of the right to be forgotten from ever becoming law in the United States. It is commonly known as the “Cancel Culture.” According to Dictionary.com, cancel culture is defined as “the popular practice of withdrawing support for (canceling) public figures and companies after they have done or said something considered objectionable or offensive. Cancel culture is generally discussed as being performed on social media in the form of group shaming.”<sup>205</sup> The Merriam-Webster defines cancel culture as “the practice or tendency of engaging in mass canceling . . . as a way of expressing disapproval and exerting social pressure.”<sup>206</sup>

The canceling of an individual does not necessarily occur to public figures. It can happen to anyone, people who, for one reason or another, are deemed by cancel culture proponents, whether or not they are active on social media, who firmly believe that another individual is deserving of ostracization.<sup>207</sup> A careful understanding of the cancel culture experience indicates that it may have its roots in Ancient Greece, where ostracism was a political process employed in 5th-century BCE Athens against individuals that the citizens of Athens felt were too powerful or dangerous to the city.<sup>208</sup> These unlucky individuals were exiled for ten years from Athens by popular vote.<sup>209</sup> Many great names from Ancient Greece fell victim to the process, even though the vote may not have been personal but rather predicated on policies or politics.<sup>210</sup> After the statutory ten-year period, many ostracized individuals were able to return to Athens.<sup>211</sup> The point of ostracization probably exemplified to the ordinary people of Athens that political power abuse would not be tolerated.<sup>212</sup> Every year, the citizens of Athens voted on whether to ostracize an individual.<sup>213</sup>

Previously in this article, the firing of Alexi McCammond was highlighted.<sup>214</sup> Other individuals have suffered a similar fate. For example, J. K. Rowling, the author of the world-renowned Harry Potter series of books and movies, was recently canceled because she aligned herself with a woman who questioned the legitimacy of trans identities.<sup>215</sup> Ellen DeGeneres, an American television personality, was canceled after her employees alleged that DeGeneres encouraged a hostile work environment.<sup>216</sup> Kristie Alley, an Emmy and Golden Globe<sup>217</sup> award winner, was canceled because she criticized Oscar’s diversity initiative and because she is a Donald Trump

<sup>205</sup> *Cancel Culture*, In DICTIONARY.COM, (n.d.), <https://www.dictionary.com/e/pop-culture/cancel-culture/>.  
<sup>206</sup> *Cancel Culture*, In MERRIAM-WEBSTER DICTIONARY, (n.d.), <https://www.merriam-webster.com/dictionary/cancel%20culture>.  
<sup>207</sup> Rachel E. Greenspan, *How ‘Cancel Culture’ Quickly Became One of the Buzziest and Most Controversial Ideas on the Internet*, BUSINESS INSIDER, (August 06, 2020), <https://www.insider.com/cancel-culture-meaning-history-origin-phrase-used-negatively-2020-7>.  
<sup>208</sup> Mark Cartwright, *Ostracism*, WORLD HISTORY ENCYCLOPEDIA, (March 30, 2016), <https://www.ancient.eu/Ostracism/>.  
<sup>209</sup> Id.  
<sup>210</sup> Id.  
<sup>211</sup> Id.  
<sup>212</sup> Id.  
<sup>213</sup> Id.  
<sup>214</sup> Katie Robertson, *supra*, note 24.  
<sup>215</sup> Gwen Aviles, *J.K. Rowling Faces Backlash after Tweeting Support for ‘Transphobic Researcher’*, NBC NEWS, (December 19, 2019), <https://www.nbcnews.com/feature/nbc-out/j-k-rowling-faces-backlash-after-tweeting-support-transphobic-researcher-n1104971>.  
<sup>216</sup> Avery Thompson, *‘Ellen Show’ Cancelled? What You Need to Know About Where the Show Stands Now*, HOLLYWOOD LIFE, (January 11, 2021), <https://hollywoodlife.com/feature/ellen-show-cancelled-4301502/>.  
<sup>217</sup> Joe Reid, *Today in TV History: Emmy-Winning Kirstie Alley Told Us All About The Big One*, DECIDER, (August 24, 2015), <https://decider.com/2015/08/24/today-in-tv-history-kirstie-alley-1991-emmys-speech/>.

supporter.<sup>218</sup> And many other celebrities have been canceled.<sup>219,220</sup>

Cancellation can also happen to seemingly private individuals. For example, Amy Cooper, a White woman, called the police, making allegedly false accusations against Christian Cooper, a Black man who at the time was bird watching in Central Park. She lost her finance position and was temporarily forced to surrender her dog to a shelter because people on the Internet called her a racist.<sup>221</sup> Christian Cooper later said, "I'm not sure someone's life should be defined by 60 seconds of poor judgment."<sup>222</sup> Brett Weinstein, a former professor from Evergreen College, was canceled by the school's student for publicly questioning the wisdom of having a day of absence for only white students.<sup>223</sup> The University of Illinois, The John Marshall Law School Professor Jason Kilborn administered a Civil Procedure final exam. A question about employment discrimination used a profane expression for African American women.<sup>224</sup> Kilborn's African American students were offended by the question on the exam and demanded his termination.<sup>225</sup> A Harvard undergraduate used TikTok to jokingly threaten to stab any individual who said "all lives matter" cost the student a consulting job.<sup>226</sup> A student at Fordham University was punished because students complained that the student had posted a photo of himself holding a gun with a comment referring to the 1989 Tiananmen Square massacre.<sup>227</sup> This is only the tip of the iceberg.

Moderates on the Left appear to be afraid that the current cancel culture as espoused by the Radical Left they believe that it may devolve into tyranny.<sup>228</sup> Led by Gloria Steinem (feminist and journalist), Garry Wills (historian), and J.K. Rowling (author of the Harry Potter books), 150 cultural icons voiced their disapproval of cancel culture, stating that "The way to defeat bad ideas is by exposure, argument, and persuasion . . . not by trying to silence or wish them away."<sup>229</sup> According to the Alliance Defending Freedom, a conservative Christian organization, American problems are not silencing others' speech but rather engaging in conversation and debate.<sup>230</sup> Suppose years from now, this information is available to everyone forever. In that case, the question that begs an answer is how individuals in society will

grow to become better human beings if other people are constantly reminding them about the foolish and silly things they said or done in the past. The answer is both simple and frightening. Individuals may not grow, and whole societies may stagnate under the weight of massive amounts of negative information. Simply stated, cancel culture may be significantly contributing to the decline of civilization.

If the cancel culture becomes an integral American and Western society, the right to be forgotten will probably never be recognized in the United States. The cancel culture has a vested interest in ensuring that society is purified and dissent is quashed. The likelihood of the right to be forgotten being recognized in the United States seems to be getting smaller and smaller with each passing day as more and more data is put on the Internet, data that will be stored and accessible forever.

One way to limit damage to individual lives from the cancel culture is to borrow an idea from the Fair Credit Reporting Act (FCRA).<sup>231</sup> Under the FCRA, after seven years, all personal information, regardless of the nature of the information, is deleted from a credit report because its relevancy is questionable. A similar law could be passed requiring search engines, such as Google, to remove personal information from the informational database. This potential law and applying Costeja González in the United States would ensure that negative information that is neither relevant nor material would adversely affect the citizenry. Of course, there would be exceptions to an American version of the right to be forgotten. These exceptions would probably be similar to the exceptions expressed in the GDPR; individual privacy rights supersede a search engine operator's economic interests, including the public's right to know.<sup>232</sup>

## CONCLUSION

In conclusion, in the United States, the answer to the question of whether the nation will ever recognize the right to be forgotten depends on how privacy and property are viewed. Succinctly, privacy should be made a property right. Suppose privacy is a property right, as Justice Gorsuch explained at in Carpenter. In that case, America can finally align its legal jurisprudence with the privacy principles specified by the OECD, APEC, and the General Data Protection Regulation. It should be remembered that the United States is a signatory to the OECD and the APEC.<sup>233</sup> The United States would also be consistent with the privacy principles attributed to America and espoused by Serwin *et al.*<sup>234</sup> The right to be forgotten could then become law.

As for any possible First Amendment violations, whose First Amendment rights would be violated by acknowledging a right to be forgotten?<sup>235</sup> It would indeed not be the individuals who would own property in the form of private information because they would be negatively exercising their rights of freedom of speech. Perhaps the companies that would be tasked with controlling the personal information, such as credit reporting agencies or Internet Service Providers (ISPs), should be tasked with deleting personal information after a specified period? If their free speech rights are at issue, the FCRP and the DMCA more than adequately address these organizations' free speech rights.

<sup>218</sup>Susan Haas, *Kirstie Alley responds to 'nasty people' criticizing her decision to vote again for Donald Trump*, USA TODAY, (October 18, 2020), <https://www.usatoday.com/story/entertainment/tv/2020/10/18/kirstie-alley-donald-trump-support-nasty-critics-twitter/3706149001/>.

<sup>219</sup>J. Hall, *7 Celebrities Who Got Canceled In 2019*, AMERICAN URBAN RADIO NETWORKS, (January 29, 2020), <https://aurn.com/7-celebrities-who-got-canceled-in-2019/>.

<sup>220</sup>Ryan Schocket, *13 Celebs Who Were Actually Canceled In 2020*, BUZZFEED, (January 03, 2021), <https://www.buzzfeed.com/ryanschocket2/celebs-canceled-in-2020>.

<sup>221</sup>Christopher Brito, *'Cancel Culture' Seems to Have Started as an Internet Joke. Now It's Anything but...*, CBSN ORIGINALS, (August 19, 2020), <https://www.cbsnews.com/news/cancel-culture-internet-joke-anything-but/>.

<sup>222</sup>Id.

<sup>223</sup>Paulina Enck, *3 Years Ago, Bret Weinstein Endured The Precursor To Today's Riots*, THE FEDERALIST, (July 01, 2020), <https://thefederalist.com/2020/07/01/3-years-ago-bret-weinstein-endured-the-precursor-to-todays-riots/>.

<sup>224</sup>Erick Johnson, *Exam Question Stirs Outrage at John Marshall Law School*, CRUSADER, (February 24, 2021), <https://chicagoerasader.com/exam-question-stirs-outrage-at-john-marshall-law-school/>.

<sup>225</sup>Id.

<sup>226</sup>Suzanne Nossel, *'Cancel Culture' Censorship Can Be Most Dangerous for Those Who Promote Social Justice*, THINK, (August 04, 2020), <https://www.nbcnews.com/think/opinion/cancel-culture-censorship-can-be-most-dangerous-those-who-promote-ncna1235671>.

<sup>227</sup>Id.

<sup>228</sup>William Watkins, *The Left's Next Revolution: Ending Cancel Culture*, CATALYST, (July 13, 2020), [https://catalyst.independent.org/2020/07/13/moderate-left-cancel-culture-revolution/?gclid=CjwKCAjwpKCDBhBPEiwAFgBzj0jB\\_LtR5axIIJ1YIZfHEXo5Mvd-3GLfTqOjRjB7JxUc13WVRNdlBcWheQAvD\\_BwE](https://catalyst.independent.org/2020/07/13/moderate-left-cancel-culture-revolution/?gclid=CjwKCAjwpKCDBhBPEiwAFgBzj0jB_LtR5axIIJ1YIZfHEXo5Mvd-3GLfTqOjRjB7JxUc13WVRNdlBcWheQAvD_BwE).

<sup>229</sup>Id.

<sup>230</sup>Charles Snow, *What Is Cancel Culture and What Does It Have to Do with the SPLC?*, ALLIANCE DEFENDING FREEDOM, (November 19, 2019), [https://adlegal.org/blog/what-cancel-culture-and-what-does-it-have-to-do-splc?sourcecode=10016058\\_r500&utm\\_source=grant&utm\\_medium=ppc&utm\\_campaign=Blog&gclid=CjwKCAjwpKCDBhBPEiwAFgBzj0jB\\_LtR5axIIJ1YIZfHEXo5Mvd-HQjB5Ieulc8JHK1Yp8mqalU6sxoC7aYQAVD\\_BwE#close](https://adlegal.org/blog/what-cancel-culture-and-what-does-it-have-to-do-splc?sourcecode=10016058_r500&utm_source=grant&utm_medium=ppc&utm_campaign=Blog&gclid=CjwKCAjwpKCDBhBPEiwAFgBzj0jB_LtR5axIIJ1YIZfHEXo5Mvd-HQjB5Ieulc8JHK1Yp8mqalU6sxoC7aYQAVD_BwE#close).

<sup>231</sup>A Summary of Your Rights Under the Fair Credit Reporting Act, *supra*, note 186.

<sup>232</sup>Press Release 7014, *supra*, note 104 at 80.

<sup>233</sup>OECD Guidelines and APEC Privacy Framework, *supra*, note 32.

<sup>234</sup>Serwin *et al.*, *supra*, note 38.

<sup>235</sup>Rebecca Heilweil, *supra*, note 140.

By refusing to acknowledge the right to be forgotten could also be a matter of money. The controllers of private personal information could argue that it would cost too much money to protect personal information privacy.<sup>236</sup> A reasonable response is that credit reporting agencies and ISPs must spend administrative dollars to comply with the FCRA and the DMCA. Google Spain SL and Google, Inc. must abide by the ruling of the EUCJ.<sup>237</sup> The initial start-up costs have already been expended.<sup>238</sup> The argument citing additional cost is not compelling.

Therefore, the United States should recognize the right to be forgotten because private personal information about an individual is the person's property. Make privacy a property right, and the question is answered affirmatively.<sup>239</sup> The problem is solved – pure and simple.

**How to cite this article:**

Donald L. Buresh (2021) 'Will cancel culture prevent the adoption of the right to be forgotten?', *International Journal of Current Advanced Research*, 10(04), pp. 24127-24137. DOI: <http://dx.doi.org/10.24327/ijcar.2021.24137.4783>

\*\*\*\*\*

---

<sup>236</sup> Craig A. Newman, 'A Right to Be Forgotten' Will Cost Europe, THE WASHINGTON POST, (May 26, 2014), <https://www.washingtonpost.com/>.

<sup>237</sup> Press Release 7014, *supra*, note 104.

<sup>238</sup> Rose Powell, *supra*, note 138.