



July 7, 2015

Chairwoman Edith Ramirez
Commissioner Julie Brill
Commissioner Maureen K. Ohlhausen
Commissioner Joshua D. Wright
Commissioner Terrell McSweeney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Complaint Regarding Google's Failure To Offer 'Right To Be Forgotten' In The U.S.

Dear Chairwoman Ramirez and Commissioners Brill, Ohlhausen, Wright and McSweeney:

I am writing on behalf of Consumer Watchdog, a nationally recognized nonprofit, nonpartisan consumer education and advocacy organization, to formally lodge a complaint about Google's failure to offer U.S. users the ability to request the removal of search engine links from their name to information that is inadequate, irrelevant, no longer relevant, or excessive. In Europe the ability to make this request is popularly referred to as the Right To Be Forgotten. As Commissioner Brill has suggested it may more accurately be described as the Right Of Relevancy or the Right To Preserve Obscurity.¹ Google's refusal to honor the right and consider such removal requests in the United States while holding itself out to be concerned about users' privacy is both unfair and deceptive, violating Section 5 of the Federal Trade Commission Act. We urge the Commission to investigate and act.

Here is why the Right To Be Forgotten – or Right of Relevancy – is so important to protecting consumers' privacy in the digital age: Before the Internet if someone did something foolish when they were young – and most of us probably did – there might well be a public record of what happened. Over time, as they aged, people tended to forget whatever embarrassing things someone did in their youth. They would be judged mostly based on their current circumstances, not on information no longer relevant. If someone else were highly motivated, they could go back into paper files and folders and dig up a person's past. Usually this required effort and motivation. For a reporter, for instance, this sort of deep digging was routine with, say, candidates for public office, not for Joe Blow citizen. This reality that our youthful indiscretions and embarrassments and other matters no longer relevant slipped from the general public's consciousness is Privacy By Obscurity. The Digital Age has ended that. Everything – all our digital footprints – are instantly available with a few clicks on a computer or taps on a mobile device.

¹ Julie Brill, Privacy in the Age of Omniscience: Approaches in the United States and Europe, https://www.ftc.gov/system/files/documents/public_statements/581751/140911mentorgroup.pdf

In fact the Right of Relevancy is also recognized in some U.S. laws. For example the Fair Credit Reporting Act, which the FTC also enforces, requires that after a certain period of time – seven years in most cases – information about debt collections, civil lawsuits, tax liens, and even arrests for criminal offenses become obsolete and must be taken out of consumer reports.²

Google’s anti-consumer behavior around privacy issues is deceptive. The Internet giant holds itself out to be committed to users’ privacy, but does not honor requests that provide a key privacy protection. Google explains: “We know security and privacy are important to you – and they are important to us, too. We make it a priority to provide strong security and give you confidence that your information is safe and accessible when you need it. We’re constantly working to ensure strong security, protect your privacy, and make Google even more effective and efficient for you.”³ Recently Google said, “Protecting the privacy and security of our customers’ information is a top priority, and we take compliance very seriously.”⁴ In its *Privacy & Terms Technologies and Principles* Google claims, “We comply with privacy laws, and additionally work internally and with regulators and industry partners to develop and implement strong privacy standards... People have different privacy concerns and needs. To best serve the full range of our users, Google strives to offer them meaningful and fine-grained choices over the use of their personal information.”⁵

In other words the Internet giant aggressively and repeatedly holds itself out to users as being deeply committed to privacy. Without a doubt requesting the removal of a search engine link from one’s name to irrelevant data under the Right To Be Forgotten (or Right to Relevancy) is an important privacy option. Though Google claims it is concerned about users’ privacy, it does not offer U.S. users the ability to make this basic request. Describing yourself as championing users’ privacy while not offering a key privacy tool – indeed one offered all across Europe – is deceptive behavior.

Not offering Americans a basic privacy tool, while providing it to millions of users across Europe, is also an unfair practice. Acts or practices by a business are unfair under Section 5 of the Federal Trade Commission Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.⁶ Here are some examples of people who have been harmed by Google’s refusal to honor Right of Relevancy or Right To Be Forgotten removal requests in the United States. Clearly there is no countervailing benefit in continuing to link to the items from search results. Consider these examples:

² 15 U.S.C. § 1681c.

³ Google Privacy & Terms FAQ, <http://www.google.com/policies/faq/>, accessed April 27, 2015

⁴ Our commitment to protecting your Google Apps information, <http://googleforwork.blogspot.com/2015/04/our-commitment-to-protecting-your-Google-Apps-information.html>, accessed April 27, 2015

⁵ Privacy & Terms Technological Principles, <http://www.google.com/policies/technologies/>, accessed April 27, 2015.

⁶ 15 U.S.C. § 45(n)

- A young California woman was decapitated in a tragic auto accident. Photos from the grisly accident scene were wrongfully leaked by California Highway Patrol officers and posted to the Internet. A search on her name still returns the horrible photographs.⁷
- A guidance counselor was fired in 2012 after modeling photos from 20 years prior surfaced. She was a lingerie model between the ages of 18-20, and she had disclosed her prior career when she first was hired. Despite this, when a photo was found online and shown to the principal of her school, she was fired.⁸
- A Florida doctor locked herself in the bedroom to hide from her violent boyfriend. He used a steak knife to jimmy the door open. As he entered she scratched his chest with her fingernails. When the police arrived, both she and her boyfriend were arrested, her boyfriend having claimed the scratches on his chest were from the knife. She was charged with aggravated assault with a deadly weapon and battery domestic violence. The charges against were soon dropped. Soon after her photo showed up on a mug-shot website. Anyone who Googled her name found this information as one of the top results. The mug-shot websites demanded hundreds of dollars to remove the photos.⁹

Honoring the Right To Be Forgotten, or Right To Relevancy, is an important tool to protect privacy. Google's own experience in Europe demonstrates that Right To Be Forgotten removal requests can be managed in a way that is fair and not burdensome for Google. Since Google began considering Right To Be Forgotten requests last May, Google has received 274,462 removal requests. The Internet giant evaluated 997,008 URLs for removal from its search results, and has dropped 348,794 or 41.3 percent. It declined to remove 495,673, or 58.7 percent of the links.¹⁰ Here are some of those cases:

- A woman in Italy requested that Google remove a decades-old article about her husband's murder, which included her name. The page was removed from search results for her name.
- A Swiss financial professional asked Google to remove more than 10 links to pages reporting on his arrest and conviction for financial crimes. Google did not remove the pages from search results.

⁷ The Solace of Oblivion, Jeffrey Toobin, The New Yorker, <http://www.newyorker.com/magazine/2014/09/29/solace-oblivion>, accessed April 28, 2015

⁸ Manhattan HS guidance counselor stripped of job over steamy photo past, Susan Edelman, New York Post, <http://nypost.com/2012/10/07/manhattan-hs-guidance-counselor-stripped-of-job-over-steamy-photo-past/>, accessed April 28, 2015

⁹ Mugged by a Mug Shot Online, David Segal, The New York Times, http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=3&, accessed April 28, 2015

¹⁰ Google Transparency Report, European privacy requests for search removals, <http://www.google.com/transparencyreport/removals/europeprivacy/?hl=en>, accessed June 24, 2015

- A rape victim in Germany asked Google to remove a link to a newspaper article about the crime. The page was removed from search results for the individual's name.
- Google received multiple requests from an Italian asking Google to remove 20 links to recent articles about his arrest for financial crimes committed in a professional capacity. Google did not remove the pages from search results.
- A media professional in the UK asked Google to remove four links to articles reporting on embarrassing content he posted to the Internet. Google did not remove the pages from search results.
- An Italian crime victim asked Google to remove three links that discuss the crime, which occurred decades ago. The pages were removed from search results for her name.
- In the UK a man asked Google to remove links to articles on the Internet that reference his dismissal for sexual crimes committed on the job. Google did not remove the pages from search results.¹¹

Interestingly enough, Google says it will remove certain types of links from its search results in the United States: “We want to organize the world’s information, but some content on the web is sensitive or not appropriate for everyone to see... When it will help keep you safe and avoid harm, we may remove personal information from Google Search results.¹²” Google lists the following information as data that it will remove: National identification numbers like U.S. Social Security Number, Argentina Single Tax Identification Number, Brazil Cadastro de pessoas Físicas, Korea Resident Registration Number, China Resident Identity Card, etc.; Bank account numbers, credit card numbers, images of signatures.¹³ Google just announced it would honor requests to remove links from its search results to so-called “revenge porn” – nude or explicit photos posted without the subject’s consent.¹⁴ Google’s approach to removals in the United States underscores the unfairness of offering the Right To Be Forgotten to Europeans, but not to Americans. As clearly demonstrated by its willingness to remove links to certain information when requested in the United States, Google could easily offer the Right To Be Forgotten or Right To Relevancy request option to Americans. It unfairly and deceptively opts not to do so.

It is important to understand what the Right To Be Forgotten or Right to Relevancy as implemented by the Internet giant in Europe does and does not do. It is not censorship. It does not remove content from the Web. It would not raise First Amendment issues in the United States. The right simply allows a person to request that links from their name to data that is

¹¹ Ibid

¹² Google Removal Policies, <https://support.google.com/websearch/answer/2744324>, accessed April 27, 2015

¹³ Ibid

¹⁴ “Revenge Porn” and Search, Google Public Policy Blog, <http://googlepublicpolicy.blogspot.com/2015/06/revenge-porn-and-search.html>, accessed June 24, 2015

inadequate, irrelevant, no longer relevant, or excessive be removed from search results. Americans deserve the same ability to make such a privacy-protecting request and have it honored.

Now, the Right To Be Forgotten in Europe is simply restoring the balance provided with Privacy By Obscurity for the Digital Age. The right simply allows a European to identify links that are no longer relevant and ask for their removal. Removal won't always happen, but the balance Google has found between privacy and the public's right to know demonstrates Google can make the Right to Be Forgotten or Right To Relevancy work in the United States. The Internet giant's current approach of refusing to do so while claiming to protect users' privacy is both unfair and deceptive. Consumer Watchdog calls on the Commission to act.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John M. Simpson
Privacy Project Director

Cc: Jessica Rich, Director Bureau of Consumer Protection; Chris Olsen, Deputy Director Bureau of Consumer Protection