



Chair Crystal D. Peoples-Stokes  
Committee on Governmental Operations  
Legislative Office Building 625  
Albany, NY 12248  
And via email: ([PeopleC@nyassembly.gov](mailto:PeopleC@nyassembly.gov))

May 25, 2017

**Re: In Support of A5323 (Weprin)**

Dear Chair Peoples-Stokes:

I am writing on behalf of Consumer Watchdog, a national nonpartisan nonprofit public interest group, to support Bill A5323 (Weprin), the Right to Be Forgotten and Internet Libel/Defamation Bill. The proposed law fully allows free speech and public debate on the Internet, while preventing abuses and the resulting harm and destruction of the lives and careers of innocent persons. It would apply only to situations where malicious or otherwise abusive Internet postings and search engine links are causing the victim “financial, reputational and/or demonstrable other harm” to the victim’s “professional, financial, reputational or other interest.” In an era of growing Internet abuses, including by increasing so-called “fake news,” such a measure is even more important. An important provision of the bill is that the statute of limitations to bring an action for defamation, should an item be libelous, would start when an article is removed from the Internet, not when it was first published, because Internet defamation is continuous and its harm is ongoing and perpetual.<sup>1</sup>

Bill A5323 was carefully crafted not to abridge free speech and the First Amendment to the U.S. Constitution. There is no prior restraint; under the bill, a Right to Be Forgotten request can be made only after “a significant lapse in time from . . . first publication.” The bill does not apply to governmental nor political matters, as it expressly excludes content on the Internet that is “material to current public debate or discourse.” It likewise does not apply to “a matter that is of significant current public interest” in which a person played a “central and substantial” role.

The bill gives Internet users the ability to request the removal of material and search engine links from their name to information that is inadequate, irrelevant, no longer relevant, or excessive. A5323 and Europeans label the ability to make this vital privacy-protecting request as the Right to Be Forgotten. As former Federal Trade Commissioner Julie Brill has suggested, it perhaps more accurately may be described as the Right of Relevancy or the Right to Preserve Obscurity.<sup>2</sup>

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 sometimes might be a public

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<sup>1</sup> “Internet Publications and Defamation - Why the Single Publication Rule Should Not Apply,” Odelia Braun, Golden Gate University Law Review, Vol. 32, Issue 3, 2002, <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1838&context=ggulrev>.

<sup>2</sup> Julie Brill, “Privacy in the Age of Omniscience: Approaches in the United States and Europe,” September 11, 2014, [https://www.ftc.gov/system/files/documents/public\\_statements/581751/140911mentorgroup.pdf](https://www.ftc.gov/system/files/documents/public_statements/581751/140911mentorgroup.pdf).

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 and often from many years (if not decades) ago. If someone else were highly motivated, they could do manual research and go back into library archives and microfilm, and dig up a person's past. Usually this required appreciable effort and motivation. For a reporter, for instance, this sort of deep digging was routine for, say, candidates for public office, but not for John Doe citizen. This pre-Google reality, that our youthful indiscretions and embarrassments and other matters no longer relevant previously slipped from the general public's consciousness, was Privacy by Obscurity. However, the Digital Age has ended that. Now everything – all our digital footprints – are instantly available with a few clicks on a computer or taps on a mobile device.

In fact, the Right of Relevancy is already recognized in some U.S. laws. For example, the Fair Credit Reporting Act, which the FTC 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.<sup>3</sup> Its protections are not broad enough, however.

Nearly nine in ten Americans back the Right To Be Forgotten. A poll by Benenson Strategy Group and SKDKnickerbocker found that 52 percent strongly support a U.S. law, another 36 percent somewhat support it.<sup>4</sup>

Failure to provide the Right to Be Forgotten in the United States has hurt and injured many thousands of people, sometimes very badly. Here are some real-world examples:

- 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 family name still returns the horrible photographs.<sup>5</sup>
- A guidance counselor was fired in 2012 after modeling photos surfaced from 20 years prior. 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.<sup>6</sup>

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<sup>3</sup> 15 U.S.C. § 1681c.

<sup>4</sup> “Public Wants Right To Ne Forgotten Online,” Mario Truillo, The Hill, March 19, 2015, <http://thehill.com/policy/technology/236246-poll-public-wants-right-to-be-forgotten-online>, accessed May 25, 2017

<sup>5</sup> “The Solace of Oblivion,” Jeffrey Toobin, The New Yorker, September 29, 2014, <http://www.newyorker.com/magazine/2014/09/29/solace-oblivion>, accessed April 28, 2015.

<sup>6</sup> “Manhattan HS guidance counselor stripped of job over steamy photo past,” Susan Edelman, New York Post, October 7, 2012, <http://nypost.com/2012/10/07/manhattan-hs-guidance-counselor-stripped-of-job-over-steamy-photo-past/>, accessed April 28, 2015.

- 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 her were soon dropped. But soon after, her photo showed up on mug-shot websites. And 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.<sup>7</sup>

Enacting a bill providing the Right to Be Forgotten, or Right to Relevancy, would provide an important tool to protect privacy. Google’s 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 or other search engine providers and Internet publishers. Since Google began considering Right to Be Forgotten requests in May 2014, after a court decision required them to do so, Google has received 704,314 removal requests. Google evaluated 1,963,386 URLs for removal from its search results, and has dropped 716,894 or 42.3 percent. It declined to remove 944,331, or 56.8 percent of the links.<sup>8</sup> 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.
- 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 victim’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 the victim’s name.

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<sup>7</sup> “Mugged by a Mug Shot Online,” David Segal, The New York Times, October 5, 2013, [http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&\\_r=3&](http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=3&), accessed April 28, 2015.

<sup>8</sup> Google Transparency Report, European privacy requests for search removals, <http://www.google.com/transparencyreport/removals/europeprivacy/?hl=en>, accessed June 24, 2015.

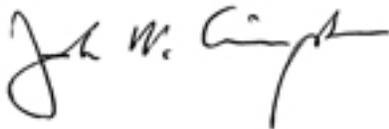
- In the UK, a man asked Google to remove links to articles on the Internet that reference his dismissal for sexual crimes committed on the job. Google did not remove the pages from search results.<sup>9</sup>

It is important to understand what the Right to Be Forgotten or Right to Relevancy, as already implemented by Google in Europe, does and does not do. It is not censorship. It would not raise First Amendment issues in the United States. The right simply allows a person to request that material and links from their name to data that is inadequate, irrelevant, no longer relevant, or excessive be removed. Americans deserve the same ability as Europeans to make such a privacy-protecting request and have it honored.<sup>10</sup>

Now, the Right to Be Forgotten in Europe is simply restoring the balance, previously provided by Privacy by Obscurity, for today's Digital Age. The right simply allows a European to identify material that is no longer relevant and ask for its removal. Removal will not always happen, but the balance Google has found between privacy and the public's right to know demonstrates that Google and other Internet companies can make the Right to Be Forgotten, or Right to Relevancy, likewise work in the United States. Consumer Watchdog respectfully urges you to protect New Yorkers' privacy and support A5323. Indeed, we hope that the New York State bill becomes a model for the entire United States.

If you have any questions, would like any additional information, or if you would like us to provide further documents or oral testimony, please do not hesitate to contact me.

Sincerely,



John M. Simpson  
Privacy Project Director

Cc: Committee on Governmental Operations: Assemblymembers Michael Benedetto, Rodneyse Bichotte, Michael Blake, David Buchwald, Kevin Byrne, Sandy Galef, Deborah Glick, Andy Goodell, Alicia Hyndman, Mark Johns, Ron Kim, Kieran Michael Lalor

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<sup>9</sup> Ibid.

<sup>10</sup> "Americans Have a Right to Be Forgotten," Giovanna Giampa, Seton Hall Law, 2016, [http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1727&context=student\\_scholarship](http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1727&context=student_scholarship).