

Brief Reflections about The Fundamental Law to Forget

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ABSTRACT

The fundamental right to forget, is a new right that arises as a negative result of the development of technology. Thus, the right to oblivion is aimed at preventing and counteracting the damages caused by the no little as harmful personal information published on the Net.

In the present presentation, the author analyzes in a profound manner how wide, the various reaches and edges of the same, to conclude sketching proposals on the matter.

Keywords: Right to be forgotten, Right to digital oblivion, Right to the expiration of the negative data, Right to be forgotten, Right to digital darkness, Right to dexindexar

INTRODUCTION

The development of humanity involves, in turn, advances in the various areas of knowledge, this generates the advent of new scenarios of inescapable interaction. However, although it is true that they are mainly for the benefit of humanity, this is not an obstacle for it to also configure inconveniences, undesirable and harmful situations.

Thus, the Right true to its nature to be a shadow that follows reality, to make possible the coexistence of the human being in society; warns of situations that occurred in and as a result of the increasingly widespread use of the internet. We refer to the problems that arise from the effects of the incorrect treatment of the personal information contained therein.

In this sense, it is pertinent to point out that, "The global and universal nature of the Network, as well as the fact of the permanence and easy access of the information contained in it, highlight the need for users, on the one hand, be aware of the information - your own and that of third parties - that you provide, in order to avoid a possible loss of control over them when they are incorporated into the Internet; and on the other, that the user be provided with effective defense mechanisms against the risks that the unstoppable development of this system may entail"¹.

¹ Rallo Lombarte, Artemi. El Derecho Al Olvido Y Su Protección. A Partir De La Protección De Datos. En Línea: Recuperado En Fecha 04/06/20 De Revista Telos

And it is that, as is logical and could not be foreseen at the time, certainly not a little personal information online, it is covered with an expiration date.

Thus, in the words Of Rallo Lombarte, it is worth mentioning that, while outside the Network, citizens grant their data for a specific purpose and there is the possibility that they will be canceled once their purpose is exhausted; On the Internet there are search engines, which provide a quasi-eternal character that can alter the timeline².

In this installment, we invite you, therefore, to join us on this fascinating journey of reflections and critical optics, related to the fundamental right to be forgotten.

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https://Telos.Fundaciontelefonica.Com/Seccion=1268&Idoma=Es_Es&Id=2010110416500001&Activo=6.Do#, P. 01. Madrid, 2010.

² Rallo Lombarte, Artemi. *Ob. Cit*, P. 02.

ADDRESSING THE THEME

The antecedent, in strict sense of the fundamental law to be forgotten by natural persons, is the law to the protection of personal data or the law to informational self-determination, also known as: the law to the protection of personal data. However, it should be borne in mind that the second law named (as opposed to the law to be forgotten), is referred to information that is not registered in the Network.

The law to forget is defined in three ways³: “i) a fictitious term whose core is the law to access, rectify and cancel our personal data that are in other people's bases; ii) special obligations to eliminate financial and criminal data after a certain period of time; iii) the de-indexing of information in search engines, that is, that the information is not deleted, but simply stops appearing in the search engine”.

There is a nature of opportunity between the fundamental laws to privacy and oblivion. In the first case, it is mainly exercised ex ante, that is, prior to the possible publication of the information, unlike the second, where ex post is always manifested, that is, after having been published, either with the consent or not of the injured. In addition, the law to forget involves the non-republication or redivulgence of facts or accusations, although certain and already known, do not prove to be exact or updated, because they were already judged in due course and therefore, the sanctioned person would have already been rehabilitated. Well, not for that reason, he would have to deserve a life sentence online, due to the already well-known Internet capacity, of not forgetting almost perpetual.

Thus, we postulate that the fundamental law to forget comes from a broader right, than the so-called Internet right. At the same time, the right to privacy is closely related to the law to be forgotten; existing between them a relation of gender and species, respectively. However, with regard to its denomination: “right to be forgotten”, we answer with your mistake. This, given that forgetting turns out to be characteristic of the psychology of natural persons, as a measure of memory protection. However, in the first place, the Network does not have a life of its own, ergo cannot forget. Thus, its most accurate definition would be: “law to the de-indexation of personal data”. But, given that it (“law to be forgotten”), has been used in almost all the states that address it, the eventual change of company name does not matter much.

³ Pérez De Acha, Gisela. *Una Panorámica Sobre El Derecho Al Olvido En La Región*. En Línea: Recuperado En Fecha 04/06/20 De Derechos Digitales América Latina <https://derechosdigitales.org/9324/Una-Panoramica-Sobre-La-Discusion-En-Torno-Al-Derecho-Al-Olvido-En-La-Region/>. Santiago De Chile, 2015.

The violation of the law to oblivion, in turn, means the impairment of the fundamental law to the free development of the personality of the affected. This, in view of the limitation of their law to lead a life away from limitations, accusations or stigmatization, which, incidentally, leads to the violation of additional laws, such as work, non-discrimination, honor, to the good reputation, among others.

It is undeniable that the law to be forgotten is recognized in a non-express way, that is, under the nature of open numbers of the fundamental laws recognized by Art. 3º.-, of the Political Constitution, which advocates: “The enumeration of the laws established in this chapter does not exclude the others that the Constitution guarantees, nor others of a similar nature or that are based on the dignity of man, or on the principles of sovereignty of the people, the democratic State of law and the republican form of government”. And, although it sounds contradictory, it is to be recognized that by way of regulation and regulation, the fundamental law to be forgotten is not specifically recorded in the legal norm. (With few exceptions: As Nicaragua⁴ and Russia).

The legal principles of the law to be forgotten are not established. This, because we believe that the law to personal data protection, contains or is broader than the scope of the law to be forgotten. Proof of this, is that the various pronouncements of the courts in cases on the right to be forgotten, have supported their decisions in some of the basic legal principles of personal data protection, if they need to specify their own or exclusive principles of the law to be forgotten. Thus, we have: i) Purpose, ii) Relevance, iii) Accuracy and Accuracy, and iv) Quality.

We believe that, in the fundamental law to oblivion, the following actors inevitably exist, without all of which it could not be configured or appealed to. Thus, we have: i) Internet users, ii) Search engines, managers or search engines, online, iii) Web pages or portals, iv) Web links or links, v) Information of the affected person published on the Network, anachronistic and inaccurate, and vi) The affected.

It is commonly understood that the search engine par excellence and even monopolistic and unique turns out to be the one in appearance, omnipresent Google in the world. Nothing is further from being true, because there are other search engines that cover places where Google does not arrive and are: i) Bing, ii) Yandex, iii) Blippex, iv) Wolfram Alpha, v) Blekko, vi) Naver, and vii) Baidu. Therefore, it is likely that, for example, once the separation of your personal data has been achieved in the Google search engine, it turns out that they continue to appear in another search engine. What would complicate the exercise of the fundamental law to forget, to say the least. Special mention should be made of the Deep Webb or deep internet theme, which contains 96% of what has been published on the superficial internet, where recently the right to be forgotten is also effective.

⁴PÉREZ DE ACHA, Gisela. *Ob. cit.*

FINAL THOUGHTS

We experience a transition from the law to oblivion, although there are certain advances, especially in Europe (mainly Spain), where they are basilarly on grounds of jurisprudence and doctrine. This right is intended to safeguard the online laws of natural persons. This would not have to exclude legal or legal persons. Definitely as in everything, the advancement of technology brings with it its flats, therefore it is necessary to harmonize the fundamental laws, preferably to the scenario of the validity and development of the law to forget the personal data contained in the Network legislate and regulate the fundamental law to be forgotten, in order to extend the protection of human laws and fundamental freedoms.

Finally, it is also a challenge that, at the beginning of the celebration of the bicentennial of our independence, it is an unbeatable opportunity to show ourselves and demonstrate ourselves as a just, democratic society (although in strictu sensu, it is known that the human being is undemocratic by nature, since it is governed by the principles of hierarchy and territoriality) and above all, matures. Therefore, it is therefore also a reason for the fundamental rights of natural and legal persons, such as the fundamental right to be forgotten, in the 21st century, not only recognized and regulated by law, but also duly protected.

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