

Global Data Protection: Developments in Right to Be Forgotten

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As we approach the May 2018 effective date of the ***EU General Data Protection Regulation*** (“***GDPR***”), there have been a number of global developments over the last few months with respect to the so-called “*right to be forgotten*,” which will be codified under ***Article 17*** of the GDPR.

European Developments

In the EU, a recent Court of Justice of the EU (“CJEU”) decision limited the right to be forgotten with respect to public records. And in February, A French high administrative court [raised several questions](#) to the CJEU relating to the right to be forgotten in light of the *Google v. Costeja Gonzalez* [decision](#). The questions address whether and in what circumstances search engines must delist links to websites in response to requests from data subjects, and arose in the context of a pending dispute between Google and CNIL, the French data protection authority.

A [decision](#) by a Circuit Court in Ireland recognized the right of a former election candidate to request the removal of information posted about him on Reddit under the right to be forgotten. And the UK recently [solicited views](#) on its own implementation of the GDPR, including input regarding the interplay between the right to be forgotten and freedom of expression in the media.

U.S. Developments

U.S. law does not recognize a general right to be forgotten, which could conflict with strong First Amendment protections for the freedom of expression in the U.S. Interestingly, however, a bill ([Assembly version](#); [Senate version](#)) introduced in New York in February would have codified a version of the right to be forgotten in New York. The bill raised [substantial First Amendment concerns](#), and the Senate version of the bill was withdrawn in March, although the Assembly version appears to remain pending.

Other International Developments

In Brazil, a Superior Court [decision](#) held that search engines cannot be compelled to remove search results relating to a specific term or expression. And the Brazilian Supreme Court is expected to hear a [right to be forgotten case](#) relating to Brazil's largest television network later this year.

Finally, the Japanese Supreme Court issued its first [decision](#) on the right to be forgotten, declining to enforce the right against Google. According to the Supreme Court, deletion “can be allowed only when the value of privacy protection significantly outweighs that of information disclosure,” and the court set forth a series of factors relevant to that determination.

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