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COMMENT

FOLLOWING IN THE EUROPEAN UNION'S FOOTSTEPS: WHY THE UNITED STATES SHOULD ADOPT ITS OWN "RIGHT TO BE FORGOTTEN" LAW FOR CRIME VICTIMS

*Erin Cooper**

INTRODUCTION

In 2009, pop singer, Rihanna, was physically assaulted by her then-boyfriend, R&B artist, Chris Brown.¹ After *both* Rihanna and Chris Brown cancelled their appearances at that night's Grammys, the world became abuzz with curiosity, wondering what had happened between the two. Within hours of the award ceremony, allegations of Chris Brown's abuse were made public.

As more and more information became available, there was no longer a mystery of what occurred the morning of the assault.² Everything from pictures of the bite marks on Rihanna's skin, to the eventual picture leak of her entire face, battered and bruised, were all on the Internet to see.³ All it took was for a person to type "Rihanna" or "Chris Brown" into a Google search to see nearly all of the details surrounding this private altercation. In fact, Rihanna and Chris Brown were the fifth "fastest rising" search in Google for 2009, with Rihanna being the sixth highest search in Google images.⁴

On average, Google executes 40,000 searches per second.⁵ That comes to about 3.5 billion searches per day, and 1.2 trillion searches per year.⁶ Over the last 16 years, Google has become the epicenter of the

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1. Sean Michaels, *Rihanna was The Victim of Alleged Chris Brown Assault, Says Police Report*, THE GUARDIAN (Feb. 10, 2009), <http://www.theguardian.com/music/2009/feb/10/rihanna-victim-chris-brown-assault>.

2. *Id.*

3. Nancy Dillon & George Rush, *TMZ Posts Rihanna Photo Showing Star's Bruised Face After Alleged Chris Brown Beating*, THE NEW YORK DAILY NEWS (Feb. 20, 2009), <http://www.nydailynews.com/entertainment/gossip/tmz-posts-rihanna-photo-showing-star-bruised-face-alleged-chris-brown-beating-article-1.366222>.

4. *U.S. Overview*, GOOGLE ZEITGEIST (2009), http://www.google.com/intl/en_us/press/zeitgeist2009/overview.html (last visited Sept. 11, 2015).

5. *Google Search Statistics*, INTERNET LIVE STATISTICS, <http://www.internetlivestats.com/google-search-statistics/> (last visited Sept. 11, 2015).

6. *Id.*

modern-day Internet.⁷ It is currently the most used website in the world.⁸

With all of the world's answers seemingly at the touch of the keyboard, people have the ability to search and find information with ease. It takes just seconds to discover what would have taken potentially hours searching through encyclopedias to find and technology is only getting more advanced.⁹ However, this ease of access to information leads to potential privacy problems, particularly for the sensitive information of crime victims and the crimes committed against them.

Additionally, as most people know, once something is on the Internet, it may last forever.¹⁰ This is particularly troubling for crime victims who did not choose to be connected to a crime or for their information to be placed on the Internet. Rihanna can attest to this; years later, Rihanna is still affected by the assault which occurred over 6 years ago, and the photos of her mugshot are still available on Google images.¹¹

Of course, Rihanna is a celebrity and public figure, and her sense of privacy is much different than the average individual, but that does not mean this same situation cannot happen to any crime victim, even if not at the same magnitude. All it takes is one court document to be placed on a website or a blog, and one person to enter the crime victim's name into a Google search. Thereafter, the crime victim has the potential to be connected with the offense and their perpetrator. Without an option to remove this information from Google search results, the victim may potentially be connected to the crime indefinitely.

This comment aims to look at this intersection between Google search results, their lack of removal options in the United States, and the potential harm this can cause crime victims. The comment will begin by assessing Google's method for delivering search results, and its general removal process for most non-European nations. Then, this comment will continue by looking at the European Union and its "right to be forgotten" ruling that allows people in certain circumstances to remove their personal information from the Internet, and what the United States can learn from its implementation. Moreover, we will

7. *Desktop Search Engine Market Share*, NET MARKET SHARE, <https://www.netmarketshare.com/search-engine-market-share.aspx?qprid=4&qpcustomd=0> (last visited Sept. 11, 2015).

8. *The Top 500 Sites on the Web*, ALEXA, <http://www.alexa.com/topsites> (last visited Oct. 29, 2015).

9. See Tim Wu, *As Technology Gets Better, Will Society Get Worse?*, THE NEW YORKER (Feb. 6, 2014), <http://www.newyorker.com/tech/elements/as-technology-gets-better-will-society-get-worse>.

10. TED CLAYPOOLE, ET. AL, PROTECTING YOUR INTERNET IDENTITY: ARE YOU NAKED ONLINE? 9 (2012).

11. Lisa Robinson, *Rihanna in Cuba: The Cover Story*, VANITY FAIR (Oct. 31, 2015), <http://www.vanityfair.com/hollywood/2015/10/rihanna-cover-cuba-annie-leibovitz>.

then contrast the European Union with the United States. Here, the focus will be on the First Amendment's Freedom of Speech and protections of privacy. Lastly, this comment will suggest a method for Google to solve this serious issue that would protect victims' privacy and ensure that the first item to come up in Google search results would not connect them to the crime committed against them.

BACKGROUND

GOOGLE'S SEARCH RESULTS TECHNIQUE AND THEIR APPROACH TO RESULTS REMOVAL, GENERALLY

Google's Search Engine Technique

Google did not become the number one search engine in the world¹² by delivering search results that do not match the inquiry entered into the search bar.¹³ It created an algorithm and process that is ever-evolving to give the searcher the best results possible.¹⁴

Google's technique begins with crawling. Google uses this feature to determine what sites to "crawl," or scan through, and then subsequently what sites to "fetch," or obtain pages from.¹⁵ This process adds new and updated pages to the Google index, which takes all accessible pages and puts them into a searchable index.¹⁶ Since it is "almost impossible to keep a webserver secret," this process allows Google to access and make virtually any website that exists searchable.¹⁷

Google then uses a system called PageRank that caters the search results to the individual person.¹⁸ PageRank essentially looks at the links coming from and going to the page as well as the individual's preference from previous searches, and then assigns the pages rankings.¹⁹

12. *Top 500 Sites*, *supra* note 8.

13. See Walter S. Mossberg, *THE WALL STREET JOURNAL* (Mar. 1, 2001), <http://www.wsj.com/articles/SB983402663108868483> ("But it manages to combine the advantages of automated searching -- speed and scope -- with an uncanny ability to zero in on what you meant.")

14. *How Google Search Works*, *GOOGLE SUPPORT*, <https://support.google.com/webmasters/answer/70897?hl=en> (last visited Sept. 11, 2015).

15. *Googlebot*, *GOOGLE SUPPORT*, <https://support.google.com/webmasters/answer/182072?vid=1-635777672764312639-2116376058> (last visited Sept. 11, 2015).

16. *How Google Search Works*, *supra* note 14.

17. *Googlebot*, *supra* note 15.

18. *How Google Search Works*, *supra* note 14.

19. Sergey Brin & Lawrence Page, *The Anatomy of a Large Scale Hypertextual Web Search Engine*, *COMPUTER SCIENCE DEPARTMENT, STANFORD UNIVERSITY*, 4, <http://infolab.stanford.edu/~backrub/google.html> (last visited March 30, 2016).

The probability that a random surfer visits a page is its PageRank, which creates the best results possible.²⁰ Google portrays PageRank as a subjective system that is not “free from human involvement.”²¹

The PageRank is very important in determining what sites an individual might visit from Google search. There is a huge correlation between a website’s PageRank and the percentage of traffic a website receives.²² Studies show that, generally, the average person does not go past the first few pages of results.²³ There is a 95% traffic drop from page one to page two.²⁴ However, a significant drop occurs around pages six and seven, with each having only .2 and .1% percentage of Google traffic.²⁵

Google’s Unregulated Removal Process in the United States and Many Non-European Union Nations

Google has a conservative policy concerning requests to take information off of Google search results. Google’s goal is to “organize the world’s information,” which includes making information “universally accessible” to users.²⁶ In 2015, after a push to end access to “revenge porn” largely coming from 26 States,²⁷ where it had been explicitly outlawed,²⁸ Google finally decided to create a form for users to remove links from its search results.²⁹

In the United States, there are still very few circumstances in which Google will remove information from its search results. Google will remove information for child sexual abuse imagery, or if there is a valid legal request, largely coming from copyright infringement under the Digital Millennium Copyright Act.³⁰ They will also consider removing sexual imagery that was posted without consent, i.e. revenge porn,³¹

20. *Id.*

21. *Kinderstart.com, LLC v. Google, Inc.*, 2007 U.S. Dist. LEXIS 22637, 58 (N.D. Cal. 2007).

22. *The Value of Google Result Positioning*, CHIKITA: ONLINE ADVERTISING NETWORK, <https://chitika.com/google-positioning-value> (last visited Nov. 1, 2015).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Removal Policies*, *supra* note 26.

27. *26 States That Have Revenge Porn Laws*, END REVENGE PORN, <http://www.endrevengeporn.org/revenge-porn-laws/> (last visited Nov. 11, 2015)(hereinafter *26 States*).

28. Joanna Walters, *Google to exclude revenge porn from internet searches*, THE GUARDIAN (June 21, 2015), <http://www.theguardian.com/technology/2015/jun/20/google-excludes-revenge-porn-internet-searches>.

29. *Id.*

30. *Removal Policies*, *supra* note 26.

31. Walters, *supra* note 28.

and personal information such as social security numbers and credit card numbers.³²

Google takes many factors into consideration when determining whether it will remove an image or links. Google considers whether the information in the link will create a high risk of identity theft, whether the information is confidential or considered to be public, and whether the sexual images are identifiable.³³ If the information does not fit into its criteria, Google suggests that the user go to the webmaster of the actual site to have them remove it, and for the user to restrict what they put on the web in the future.³⁴ Essentially, without more, this is the end of the line for American users.

Recently, Google's stance on link removal seemed to soften even more when Google's search chief, Amit Singhal, stated in an interview that he believed innocent mistakes from childhood should "have the right to be forgotten."³⁵ However, nothing has been implemented in this regard. This, along with the creation of the removal form for "revenge porn," is an indication of a possible shift in policy for Google, which had previously been against removing anything from its search results.³⁶

THE EUROPEAN UNION'S "RIGHT TO BE FORGOTTEN"

Privacy Protection Laws of The European Union

The European Union has long championed privacy law. In the Charter of the Fundamental Rights of the European Union ("the Charter"), privacy is a key component and underlying theme throughout.³⁷ The European Union first issued a Data Protection Directive ("Directive") in 1995, aiming to protect its citizens from breaches in privacy in data processing.³⁸

The European Union passed this Directive with its focus on privacy for its citizens.³⁹ Much of the Directive focuses on protecting the user

32. *Removal Policies*, *supra* note 26.

33. *Id.*

34. *Id.*

35. Shara Tibken, *Google search chief: Users have the right to be forgotten online -- in some Cases*, CNET (Oct. 8, 2015), <http://www.cnet.com/news/users-have-the-right-to-be-forgotten-online-in-some-cases-google-search-chief-says/>.

36. *Id.*

37. *Charter of Fundamental Rights of the European Union*, 364 O. J. OF EUR. COMMUNITIES 1, 10 (2000), http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

38. *Q&A on EU Data Protection Reform*, EUROPEAN PARLIAMENT NEWS (June 24, 2015), <http://www.europarl.europa.eu/news/en/news-room/content/20130502BKG07917/html/QA-on-EU-data-protection-reform>.

39. "Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal

rather than the creators of the technology.⁴⁰ Article 12 of the Directive allows citizens to remove personal data if it is “incomplete or inaccurate” or if it is “no longer necessary.”⁴¹

Similarly, in the Charter for the European Union, Article 7 explicitly calls for “respect for private and family life,” including any private communications.⁴² Article 8 focuses on protection of personal data.⁴³ Private and personal data has to be “processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.”⁴⁴

The “Right To Be Forgotten” In The European Union

The application of privacy laws to Google search results occurs primarily through the European Court of Justice (“ECJ”) case, *Mario Costeja Gonzalez v. Google Spain*.⁴⁵ In *Costeja Gonzalez*, the ECJ interpreted the European Union Directive on Data Protection, along with Article 7 and 8 of the Charter, to find a right to privacy of information on the Internet.⁴⁶ The ECJ found this was applicable not just to websites holding the information, but to Google search results, which relay the information to visitors, as well.⁴⁷

In that case, when Costeja Gonzalez searched his own name on Google, the first link that appeared was with regard to old home auction notices used to recover social security debts that he owed at the time.⁴⁸ Gonzalez sued Google, Inc., Google Spain, and the newspaper where the article was found for violating his privacy.⁴⁹ The ECJ ruled that the search results fell under the Directive, particularly Article 12’s “no longer necessary” provision, holding Google responsible for their ac-

data.” EUROPEAN COMMISSION, EUROPEAN UNION DATA PROTECTION DIRECTIVE, 7 (Oct. 10, 2015), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>.

40. See, e.g., *id.*

41. EUROPEAN COMMISSION, FACTSHEET ON THE “RIGHT TO BE FORGOTTEN” RULING 2, *available at* http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_en.pdf (last visited March 29, 2016)(hereinafter FACTSHEET).

42. *Charter*, *supra* note 37.

43. *Id.*

44. *Id.*

45. Eleni Frantziou, *Further Developments in the Right to be Forgotten, The European Court of Justice’s Judgment in Case C-131/12, Google Spain, SL, Google Inc. v. Agencia Espanola Proteccion de Datos*, 14 HUMAN RIGHTS L. REV. 761, 762 (2014).

46. Case C-131/12, *Google Spain SL v. Mario Costeja Gonzalez*, 2014 E.C.R. 317, 7, <http://curia.europa.eu/juris/document/document.jsf?docid=152065&doclang=en> (hereinafter *Spain SL v. Mario*).

47. *Id.*

48. Frantziou, *supra* note 45.

49. *Id.*

cess.⁵⁰ The Court held that if the information was “inaccurate, inadequate, irrelevant, or excessive,” then the website must remove it.⁵¹ This ruling subsequently created the official “right to be forgotten.”⁵²

The holding in *Costeja Gonzalez* made the removal of personal data applicable to websites like Google, which provide users with links to websites through a search engine, but does not host or create the information itself.⁵³ This means that virtually any website, regardless of its location of origin, has to abide by the ruling.⁵⁴ Currently, however, this rule only pertains to European versions of the Google site.⁵⁵ The French data protection agency has further interpreted this ruling to mean Google would have to comply with removal requests across all of its domains in addition to its European nation counterpart (for example, Google.com and Google.fr), but the entire European Union has yet to enforce this.⁵⁶

Requests to Remove Links in The European Union

After the ECJ's ruling in *Costeja Gonzalez*, Google responded by creating a takedown system. Essentially, Google navigated away from its PageRank system, and subjected certain links to removal from its searchable database.⁵⁷

Google uses an online form for takedown requests.⁵⁸ The form asks an individual what European Union nation they are a citizen of, for a submission of a photo identification card, and what name the individual wants their results to be removed from.⁵⁹ Then, it asks the individual to list the links they wish to be removed and why they should be removed,

50. FACTSHEET, *supra* note 41 at 2.

51. *See Spain SL v. Mario*, *supra* note 46 (stating that, if the information is “inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out by the operator of the search engine, the information and links concerned in the list of results must be erased.”)

52. FACTSHEET, *supra* note 41 at 1.

53. “Search engines are controllers of personal data.” *Id.*

54. *Id.*

55. Lance Whitney, *Google snubbed in France over attempt to limit right-to-be-forgotten requests*, CNET (Sept. 21, 2015), <http://www.cnet.com/news/google-snubbed-in-france-over-appeal-to-limit-right-to-be-forgotten-requests/>.

56. *Id.*

57. *See Google sets up 'right to be forgotten' form after EU ruling*, BBC NEWS (May 30, 2014), <http://www.bbc.com/news/technology-27631001> (“Decisions about data removal would be made by people rather than the algorithms that govern almost every other part of Google's search system.”)(hereinafter *After EU ruling*).

58. *Search Removal Request Under Data Protection Law In Europe*, GOOGLE SUPPORT, https://support.google.com/legal/contact/lr_eudpa?product=websearch (last visited Sept. 12, 2015).

59. *Id.*

according to the *Costeja Gonzalez* ruling.⁶⁰ There is no specific timeframe to complete these requests.⁶¹

Google received 150,000 requests of 500,000 links within the first few months.⁶² Google released transparency reports about removal requests of links from the first few months,⁶³ which included everything from bad music reviews⁶⁴ to articles about child pornography arrests.⁶⁵ Through this process, we know that, if the information given in the form correctly presents a situation for removal, then it moves to a removals team, which determines the fate of the request.⁶⁶ The guidelines for the removals team was created by an advisory committee, formed by Google, made up of lawyers, professors, and other members of the tech industry.⁶⁷ If there is a dispute about whether the information should be removed or not, it then moves to a local data protection agency, which can overturn Google's decision.⁶⁸ Very few removal requests have been overturned.⁶⁹ Outside of this information, not much is known

60. *See id.* ("For each URL, please explain why the inclusion of this URL as a search result is irrelevant, outdated, or otherwise objectionable.")

61. *EU Court Ruling On "Right To Be Forgotten" Opens Pandora's Box*, REPORTERS WITHOUT BORDERS FOR FREEDOM OF INFORMATION, <http://en.rsf.org/eu-court-ruling-on-right-to-be-04-07-2014,46588.html> (last visited Oct. 29, 2015) (hereinafter REPORTERS WITHOUT BORDERS).

62. Zachary Davies Boren, *Google Has Received 500000 Requests to Delete Links Under 'Right to be Forgotten'*, THE INDEPENDENT (Oct. 13, 2014), <http://www.independent.co.uk/life-style/gadgets-and-tech/news/right-to-be-forgotten-google-has-received-500000-requests-to-delete-links-9789091.html>.

63. *European privacy requests for search removals*, GOOGLE TRANSPARENCY REPORT, <https://www.google.com/transparencyreport/removals/europeprivacy/?hl=en> (last visited Oct. 20, 2015).

64. Jenn Selby, *Pianist Dejan Lazic demands bad review be removed from Google under EU 'right to be forgotten' ruling*, THE INDEPENDENT (Nov. 3, 2014), <http://www.independent.co.uk/arts-entertainment/music/news/pianist-dejan-lazic-demands-bad-review-be-removed-from-google-under-eu-right-to-be-forgotten-9834259.html>.

65. Danny Sullivan, *How Google's New "Right To Be Forgotten" Form Works: An Explainer*, SEARCH ENGINE LAND (May 30, 2014), <http://searchengineland.com/google-right-to-be-forgotten-form-192837>.

66. Sam Schechner, *Google Starts Removing Search Results Under Europe's 'Right To Be Forgotten'*, THE WALL STREET JOURNAL (June 26, 2014), <http://www.wsj.com/articles/google-starts-removing-search-results-under-europes-right-to-be-forgotten-1403774023>.

67. *Read the Advisory Council's Final Report*, GOOGLE ADVISORY COUNCIL, <https://www.google.com/advisorycouncil/> (last visited Oct. 30, 2015).

68. Charles Arthur, *Google removing 'right to be forgotten' search links in Europe*, THE GUARDIAN (June 27, 2014), <http://www.theguardian.com/technology/2014/jun/26/google-removing-right-to-be-forgotten-links>.

69. Amy Gesenhues, *EU Says Process For Reviewing Right To Be Forgotten Appeals Is Working* (June 18, 2015), <http://searchengineland.com/eu-says-process-for-reviewing-right-to-be-forgotten-appeals-is-working-223548>.

about the process.

Since the inception of the “right to be forgotten,” the European Union has released several amendments to the law to further control the removal process. The European Union released some limitation guidelines for Google to follow in their link removal process.⁷⁰ Some of these post-*Costeja Gonzalez* guidelines for removal include: if the data processing causes “prejudice” to the individual, whether the data is up to date, and whether the search result comes up with the individual’s name.⁷¹

A further amendment required that the host websites, like Google, stop notifying publishers of the information that the links are being removed.⁷² The European Union also does not want search engines to inform the user of the specific reason that the information was removed.⁷³ The practice of not informing the publisher or Webmaster keeps the links off of the Internet. The European Union found that, when websites were given notice about the removal of improper links, they would create a new page with a different title, which would subsequently appear on the search result pages, circumventing the law.⁷⁴

U.S. LAWS THAT PREVENT GOOGLE FROM LIABILITY IN NOT REMOVING LINKS FROM THEIR SEARCH RESULTS

The Communications Decency Act

The Communications Decency Act (“CDA”) originally attempted to limit the amount of “indecent material” transmission to minors.⁷⁵ These limitations were deemed “overbroad” and were subsequently struck down by the Supreme Court in *Reno v. ACLU*.⁷⁶ However, the protections afforded to search engines and host websites are still in place. The

70. “(1) Does the search result relate to a natural person – i.e. an individual? And does the search result come up against a search on the data subject’s name?; (4) Is the data up to date?; (5) Is the data relevant and not excessive?; (8) Is the data processing causing prejudice to the data subject?” ARTICLE 29 DATA PROTECTION WORKING PARTY, GUIDELINES OF THE IMPLEMENTATION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION JUDGMENT ON “GOOGLE SPAIN AND INC. V. AEPD AND MARIO COSTEJA GONZALEZ,” C-131/12 (Nov. 26, 2014) http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf.

71. *Id.*

72. *Id.*

73. *Id.*

74. Greg Sterling, *EU Issues Right To Be Forgotten Criteria*, Search Engine Land (Dec. 1, 2014), <http://searchengineland.com/eu-issues-right-forgotten-criteria-209880>.

75. *Supreme Court Rules CDA Unconstitutional*, CNN (June 26, 1997), <http://www.cnn.com/US/9706/26/cda.overturned.hfr/index.html?eref=sitesearch>.

76. *Reno v. ACLU*, 521 U.S. 844, 882 (1997).

CDA prevents individuals from suing “interactive computer services.”⁷⁷ An interactive computer service can be any website that allows information from multiple users to be accessed.⁷⁸ Google is considered to be an interactive computer service because it allows websites to be hosted on its website and accessed through its website.⁷⁹

The CDA states that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁸⁰ This section of the CDA has been used in numerous cases preventing interactive service providers from being held liable for the content found through its sites.⁸¹ This includes defamation cases,⁸² civil rights cases,⁸³ and publication of false information.⁸⁴

The First Amendment, Freedom of Speech

Google has repeatedly argued that search results, including its PageRank system, are protected by the first amendment as free speech.⁸⁵ Google has won several cases on this basis, finding both Google search results and the way the Google algorithm creates these search results were “free speech.”⁸⁶

In *Langdon v. Google*, the plaintiff, Langdon, argued that Google violated his free speech by not putting his advertisements up in Google search results pages.⁸⁷ The court held that the search results themselves were speech and an injunctive relief compelling Google to put the

77. See 47 USCS § 230.

78. 47 USCS § 230(f)(2).

79. *O’Kroy v. Fastcase Inc.*, 2014 U.S. Dist. LEXIS 71922, 10 (M.D. Tenn. 2014).

80. 47 USCS § 230(c).

81. See, e.g., *Chi. Lawyers’ Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 672 (7th Cir. 2008)(holding that Chicago Lawyer’s committee for civil rights cannot hold Craigslist liable for discriminatory posts on their website that violate the Fair Housing Act); *Zeran v. Am. Online*, 129 F.3d 327, 331 (4th Cir. 1997)(holding American Online (AOL) was not liable for the unreasonable delay in removing the defamatory comments made against Plaintiff by an unidentified third party); *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1201-02 (N.D. Cal. 2009)(holding that without Plaintiff alleging facts that showed Google had “created or developed” any of the fraudulent advertisements on its webpages, it could not be held liable).

82. See, e.g., *Zeran v. Am. Online*, 129 F.3d at 331.

83. See, e.g., *Chi. Lawyers’ Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d at 672.

84. See, e.g., *Goddard v. Google, Inc.*, 640 F. Supp. 2d at 1201-02.

85. “PageRanks are opinions - opinions of the significance of particular web sites as they correspond to a search query... Accordingly, the Court concludes that Google’s PageRanks are entitled to ‘full constitutional protection.’” *Search King, Inc. v. Google Tech., Inc.*, 2003 U.S. Dist. LEXIS 27193, 11-12 (W.D. Okla. 2003).

86. See, e.g., *Kinderstart.com, LLC v. Google, Inc.*, 2007 U.S. Dist. at 58.

87. *Langdon v. Google, Inc.* 474 F. Supp. 2d 622, 627 (D. Del. 2007).

advertisement on their page would subsequently be an infringement of Google's own free speech.⁸⁸ The Court also held that Langdon failed to state a claim because Google was a private, for profit, company that was providing a service.⁸⁹

This freedom of speech argument is similar to what the media outlets use in cases in which newspapers and other outlets are sued for reporting private information, using free speech protection to outweigh privacy.⁹⁰ This was seen in both *Florida Star v. B.J.F.*,⁹¹ and *Cox Broadcasting Corp. v. Cohn*.⁹² In both cases, the privacy rights of rape victims were weighed against the free speech rights of the media company after the victim's full name was identified and presented through the media.⁹³ The court held in both cases that the First Amendment free speech right outweighed the rape victim's privacy rights.⁹⁴

PROTECTIONS IN PLACE FOR CRIME VICTIMS

The General Protection of Privacy

Privacy law in the United States stems from general principles of the U.S. Constitution and the subsequent Bill of Rights amendments. Despite recognition of a general "zone of privacy,"⁹⁵ or, in some instances, a "right to privacy,"⁹⁶ the United States has left the Internet fairly unregulated when it comes to possible infringement of individuals' privacy rights.⁹⁷

Some members of the Supreme Court have recognized this issue to some extent. In *United States v. Jones*, Justice Sotomayor's concurring opinion recognized that in the "digital age," people reveal information, possibly unknowingly, to others through various daily activities, which means the Court needs to "reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily dis-

88. *Id.*

89. *Id.*

90. *See Fla. Star v. B. J. F.*, 491 U.S. 524, 541 (1989).

91. *Id.*

92. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975).

93. *See Fla. Star v. B. J. F.*, 491 U.S. at 527-528; *Cox Broadcasting Corp. v. Cohn*, 420 U.S. at 471-474.

94. *Fla. Star* at 491 at 528; *Cox Broadcasting* at 496.

95. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965).

96. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); *Lawrence v. Texas*, 539 U.S. 558 (2003).

97. Joseph Steinberg, *Your Privacy Is Now At Risk From Search Engines -- Even If The Law Says Otherwise*, FORBES (June 2, 2014), <http://www.forbes.com/sites/josephsteinberg/2014/06/02/your-privacy-is-now-at-risk-from-search-engines-even-if-the-law-says-otherwise/>.

closed to third parties.”⁹⁸ Justice Alito’s concurring opinion also recognized that substantial technological changes present problems for individuals’ privacy that legislatures need to solve.⁹⁹

Similarly, in *Riley v. California*, the Court discussed the level of privacy that law enforcement must acquire before searching cell phones; the Court compared information on a cell phone, including Internet browsing history, to an individual’s private diary.¹⁰⁰ Even after these cases had been decided, with the addition of technology and the Internet, it is evident that there is still a question as to *when* something goes from being private to public.

Crime Victim’s Laws

The United States recognizes the importance of protecting the privacy of crime victims, generally, by giving them further protection in certain circumstances.¹⁰¹ Both the federal government and all fifty states have legislation recognizing the specific need for protection of crime victims.¹⁰² Both levels of government found that there needed to be additional privacy protections for victims of crimes because of the “additional hardship” suffered as a “result of contact with the system.”¹⁰³ Another form of protection comes from civil no contact orders or stalking no contact orders, which may be utilized by victims of crime, or people with reasonable fear of being a victim of a crime.¹⁰⁴

The federal government first implemented victims of crime’s rights legislation in the 1980s when it passed the Victim and Witness Protection Act in 1982, and Victim of Crime’s Act in 1984.¹⁰⁵ Each give victims a more “participatory role” in the criminal process.¹⁰⁶ The goals of this legislation were to protect the privacy interests of victim,¹⁰⁷ and encourage victims to come forward with crimes.¹⁰⁸ Since then, the federal government has passed several additional laws that protect the rights and

98. *United States v. Jones*, 132 S. Ct. 945, 957 (2012)(Sotomayor, J., concurring).

99. *Id.* (Alito, J., concurring Breyer, Kagan).

100. *Riley v. California*, 134 S. Ct. 2473, 2490 (2014).

101. U.S. DEPARTMENT OF JUSTICE, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 7, http://www.justice.gov/archive/olp/ag_guidelines.pdf (hereinafter ATTORNEY GENERAL GUIDELINES).

102. *History of Victim’s Rights*, NATIONAL CRIME VICTIM LAW INSTITUTE, http://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/history_of_victim_rights/ (last visited Sept. 11, 2015).

103. ATTORNEY GENERAL GUIDELINES, *supra* note 101.

104. *See e.g.*, 740 ILCS § 21/10; NYCLS Family Ct. Act § 842.

105. ATTORNEY GENERAL GUIDELINES, *supra* note 101.

106. *Victim’s Rights*, *supra* note 102.

107. Rebekah Smith, Comment, *Protecting The Victim: Rape And Sexual Harassment Shields Under Maine And Federal Law*, 49 Me. L. Rev. 443, n.86 (1997).

108. ATTORNEY GENERAL GUIDELINES, *supra* note 101.

privacy of the victims.¹⁰⁹ Congress even attempted to amend the Constitution with a “Victim’s Rights Amendment” but has been unsuccessful thus far.¹¹⁰

The core of these laws comes in the form of recognition of rights of the victim. This includes the right to protection, restitution, and, most importantly, the “right to be treated with fairness and with respect for the victim’s dignity and privacy.”¹¹¹ These laws may take care of the “additional hardship” in dealing with the criminal justice system;¹¹² however, they do not solve the emotional, and sometimes physical, problems that occur from being a crime victim.¹¹³ Some crime victims experience extreme distress, anxiety, or depression.¹¹⁴ Many victims also state that they experience problems in the workplace as a result of being a crime victim.¹¹⁵

Even with these protections in place, there are still instances where victims’ identities are revealed,¹¹⁶ connecting them to the crime committed against them, which can potentially harm the victims further.¹¹⁷ This risk of harm is elevated with the Internet. Even court documents are being placed on the Internet.¹¹⁸ Victims of crimes are particularly affected by the freedom and ease of access of information, which can expose personal and traumatic moments in the victim’s life.¹¹⁹ These prob-

109. *Id.*

110. *Issues: Constitutional Amendments*, THE NATIONAL CENTER FOR VICTIMS OF CRIMES, <https://www.victimsofcrime.org/our-programs/public-policy/amendments> (last visited Oct. 29, 2015).

111. Crime Victims’ Rights Act 18 U.S.C. § 3771(a)(8)(2014).

112. ATTORNEY GENERAL GUIDELINES, *supra* note 101.

113. *The Trauma of Victimization*, THE NATIONAL CENTER FOR VICTIMS OF CRIMES, <https://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/trauma-of-victimization> (last visited Oct. 30, 2015).

114. Langton & Jennifer Truman, *Socio-emotional Impact of Violent Crime* 1 (Nat’l Crim. Just. Reference Serv. No. NCJ 24707, 2014), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=269175>.

115. *Id.*

116. See Alexander Abad-Santos, *The Steubenville Victim’s Name Aired on All Three Cable News Networks*, THE WIRE (Mar. 18, 2013), <http://www.thewire.com/national/2013/03/steubenville-victim-name-tv/63245/>; Patrick Howell O’Neill, *Journalist Publishes Alleged Name and Photo of UVA Rape Victim*, THE DAILY DOT (Dec. 7, 2014), <http://www.dailydot.com/news/charles-johnson-uva-jackie-dox/>; Lamiat Sabin, *Ched Evans rape victim named by Twitter trolls*, THE INDEPENDENT (Oct. 21, 2014), <http://www.independent.co.uk/news/uk/crime/ched-evans-rape-victim-named-by-twitter-trolls-9807627.html>.

117. See, e.g., *Fla. Star* at 528.

118. See, e.g., *Public Access to Court Electronic Records*, PACER, <https://www.pacer.gov/> (last visited Oct. 29, 2015).

119. Craig Timberg & Sarah Halzack, Right to be forgotten vs. free speech, THE WASH. POST (May 14, 2014), <https://www.washingtonpost.com/business/technology/right->

lems lead to crime victims requesting link removals from Google based on this leaked information.¹²⁰ This became clearer after data on Google's link removal requests was leaked.¹²¹

ANALYSIS

WHAT THE UNITED STATES CAN LEARN FROM THE "RIGHT TO BE FORGOTTEN"

Google is the number one website in the world;¹²² it has a great influence over what the public might see on a regular basis. This, coupled with the fact that data has the potential to last on the Internet for a long time,¹²³ calls for some type of policy requiring information removal for individuals. The European Union's "right to be forgotten" is a good example of this policy. The United States can learn from the European Union's "right to be forgotten." While the ruling can benefit society, the "right to be forgotten" is too broad and gives Google immense power over the "public's right to know"¹²⁴ certain information.

The Policy Behind The "Right To Be Forgotten" Is Overall Beneficial To Society

The "right to be forgotten" provides benefits for European Union citizens. Erasing "inaccurate, inadequate, irrelevant, or excessive," information gives European Union citizens the opportunity for a fresh slate, without the older prejudicial information affecting their lives.¹²⁵ It also gives individuals more control over their own personal information and how it is being accessed online.¹²⁶

The policy behind "right to be forgotten" recognizes that an individual's private information should not be placed on the Internet without some countervailing benefits to society.¹²⁷ These individuals are not public figures.¹²⁸ They are likely average individuals who made a mistake or were victimized in the past, and they are either the cause of this

to-be-forgotten-vs-free-speech/2014/05/14/53c9154c-db9d-11e3-bda1-9b46b2066796_story.html.

120. Julia & Enrique Chaparro, *How Google determined our right to be forgotten*, THE GUARDIAN (Feb. 18, 2015), <http://www.theguardian.com/technology/2015/feb/18/the-right-be-forgotten-google-search>.

121. *Id.*

122. *Top 500 Sites*, *supra* note 8.

123. CLAYPOOLE, ET. AL., *supra* note 10.

124. *Spain SL v. Mario*, *supra* note 46 at 14.

125. *Id.* at 7.

126. Powles & Chaparro, *supra* note 120.

127. *See, e.g., Spain SL v. Mario*, *supra* note 46 at 14.

128. Powles & Chaparro, *supra* note 120.

or had no control over it whatsoever.

In recognizing this, individuals can distance themselves from a past negative situation, which may affect their lives substantially.¹²⁹ It allows individuals to correct false information on the web, and further ensure their future is not tainted by the past event. As information put on the Internet has the potential to last forever,¹³⁰ this removal process is important because it allows people to remove the potentially degrading past event. This gives individuals an opportunity to start anew, which can help with accomplishing important every-day tasks, such as obtaining a loan.¹³¹ For victims of crimes, it allows them to distance themselves from the crime committed against them.¹³²

The “Right To Be Forgotten” Is Too Broad

However, even with the large amount of benefits that the “right to be forgotten” may provide, the law is too broad, allowing too many people to request removal, largely affecting free speech rights. First, the ruling and subsequent European Union directives do not give a true test or helpful guidelines as to what should be removed. The overbreadth of the ruling allows anyone to request anything to be removed completely from Google’s database, which can be a problem in accountability and for free speech. Furthermore, there is no transparency or accountability of these websites, like Google, making it difficult to track what exactly it does in its removal process, and thus hold it accountable. The “right to be forgotten” has largely been criticized for giving Google too much power over what gets removed. The “right to be forgotten” is too expansive, with a very liberal burden of proof for link removal. We know from Google’s form that it will remove search links as applicable when it has weighed the privacy rights of an individual against the public’s right to know the information.¹³³ Yet, it has not explained at what point the removal becomes balanced in the requester’s favor.

The ECJ did not place too many limitations on what can be removed. Even with the release of post-*Costeja Gonzalez* implementation guidelines, what constituted a link removal was still vague.¹³⁴ These new guidelines were meant to give more clarity as to what links were supposed to be removed to protect the requester’s privacy. However, they do not really propose a test to determine true boundaries for re-

129. See, e.g., *Spain SL v. Mario*, *supra* note 46 at 7.

130. CLAYPOOLE, ET. AL, *supra* note 10.

131. See, e.g. *Spain SL v. Mario*, *supra* note 46 at 7.

132. Powles & Chaparro, *supra* note 120.

133. *Search Removal Request*, *supra* note 58.

134. ARTICLE 29 DATA, *supra* note 70

moval. For example, the guidelines do not clarify how someone may be prejudiced, and to what level this prejudice would lead to link removal.¹³⁵

With very few guidelines to abide by, Google makes its own determination as to what is “inadequate, inaccurate, irrelevant, or excessive” on a “case-by-case assessment.”¹³⁶ Google was essentially on its own in determining which of the 150,000 requests of 500,000 links were legitimate, and which were not.¹³⁷ However, because of the breadth of the court’s ruling, this determination could mean link removal for anything from a bad music review¹³⁸ to a criminal’s child pornography charges.¹³⁹

In addition, Google’s power of removal makes the links disappear completely.¹⁴⁰ This means that once Google grants a link removal request, the link is removed from Google’s index.¹⁴¹ The only way it would reappear on Google’s site is in the form of a new link creation.¹⁴²

This is a potential problem that interferes with the public’s “right to know,”¹⁴³ and free speech rights. By removing the information completely, Google has the power to erase portions of the Internet for individuals. While this can be a positive for certain individuals, like crime victims, who are often legitimately affected by easily accessible links,¹⁴⁴ it leads to potential criminals requesting erasure of their crimes, if it is “inadequate, inaccurate, irrelevant, or excessive.”¹⁴⁵

The public currently does not know if Google properly implements the “right to be forgotten” and truly weighs this against a public’s right to know. Google could be removing links that does not outweigh a public’s right to know, such as a criminal requesting erasure of evidence of his or her crime. As Google is the number one website in the world,¹⁴⁶ the power to remove a link completely is great and can certainly impact the public.

Thus, if the policy and subsequent guidelines are overbroad, and the link disappears from Google’s index entirely, there must be some way for citizens to see what is generally removed, and hold Google accountable for certain requests that may have consequences for the pub-

135. *Id.*

136. FACTSHEET, *supra* note 41 at 1-2.

137. Boren, *supra* note 62.

138. Selby, *supra* note 64.

139. Sullivan, *supra* note 65.

140. *After EU ruling*, *supra* note 57.

141. *Id.*

142. ARTICLE 29 DATA, *supra* note 70.

143. *Spain SL v. Mario*, *supra* note 46 at 14.

144. Powles & Chaparro, *supra* note 120.

145. FACTSHEET, *supra* note 41 at 1-2.

146. *Top 500 Sites*, *supra* note 8.

lic.¹⁴⁷ In 2014, Google released a transparency report of the requests it had removed up until June of that year.¹⁴⁸ It gave examples of certain links that it removed from its search results, including copyright infringement cases¹⁴⁹ and links to articles or Facebook posts criticizing certain government officials,¹⁵⁰ with Facebook posts link removal accounting for nearly 10,000 removal requests.¹⁵¹ However, even with the transparency report, the public was unable to decipher which links Google decided to remove and what links Google decided should stay.¹⁵²

Similarly, data of Google's removal requests under the "right to be forgotten" leaked in July of 2015.¹⁵³ Google had previously refused to make more of this information public.¹⁵⁴ This data breach shed some light on who utilizes removal requests. Despite media coverage of numerous claims that the "right to be forgotten" was being used by politicians, criminals, and celebrities to get unwanted information out of the public eye, the data leak demonstrates that most of the removal requests were from average people.¹⁵⁵ The data leak still failed to completely detail what Google's removal process entailed.¹⁵⁶

The difference in amounts of data may be because the "right to be forgotten" was in effect more in 2015 than 2014, meaning more individuals were requesting removal rather than the government. However, it also provides an example of how Google, in effect, has complete control of what and how information is being removed, and what the public learns about it. Google has not fully released this information, and without true transparency, the public cannot be sure of what Google is choosing to remove.

On the other hand, the directive agency that looks at appeals of denied link removal requests, aside from court involvement, presents the

147. Powles & Chaparro, *supra* note 120.

148. *Government Requests to Remove Information*, GOOGLE TRANSPARENCY REPORT (Sept. 30, 2015), <https://www.google.com/transparencyreport/removals/government/?hl=en>.

149. *Transparency Report: Requests to Remove Content Due to Copyright*, GOOGLE TRANSPARENCY REPORT (Sept. 20, 2015), <https://www.google.com/transparencyreport/removals/copyright/?hl=en>.

150. "We received a court order ruling for the removal of a Facebook post. The post criticized the President of the Court of Appeal of Palermo for rejecting a request to have Mr. Berlusconi as a witness in the trial of a politician accused of having mafia affiliations ... We removed the Facebook URL from google.it." *Id.*

151. *European privacy*, *supra* note 63.

152. *See Transparency Report*, *supra* note 149 (stating that, "[w]e always assess the legitimacy and completeness of a government request.")

153. Powles & Chaparro, *supra* note 120.

154. *Id.*

155. *Id.*

156. *Id.*

sole accountability of link removal requests.¹⁵⁷ Thus far, very few of these cases have been overturned.¹⁵⁸ However, as 70% of link requests are denied,¹⁵⁹ and very few are even brought to the agency, it is difficult to hold Google accountable for all requests without true transparency.

If the court's ruling, and minimal subsequent guidelines were not over-broad, requiring transparency would not be as essential. The over-breadth of the "right to be forgotten" creates the need to hold Google accountable for *what* it removes because it does not narrowly focus on whether individuals' situations truly outweigh the "public's right to know."¹⁶⁰ This ruling basically allows a private company to determine removal, which is a problem for the public's interest in certain information.¹⁶¹

WHY THE UNITED STATES SHOULD IMPLEMENT A "RIGHT TO BE FORGOTTEN" FOR CRIME VICTIMS.

The "right to be forgotten" in its current form would never be constitutional in the United States. Its failure to properly narrow criteria as to who benefits from the law alone would make the "right to be forgotten" too broad and too vague to be constitutional in the United States.¹⁶² Despite the possible unconstitutionality of a similar law in the United States, it is quite clear, with a constantly changing Internet and technology landscape, there must be some type of "right to be forgotten" for individuals. This is particularly true for crime victims, who have a current and clear need for distancing themselves from certain information online.

Crime Victims Are A Group That Is Particularly Hurt By Spread of Certain Information On The Internet.

The United States recognizes a particular need for crime victim protection because of the "additional hardship" suffered as a "result of contact with the system,"¹⁶³ which has resulted in the information affording crime victims protections.¹⁶⁴ Many crime victims experience physical and emotional harm as a result of a crime.¹⁶⁵ This harm could

157. Gesenhues, *supra* note 69.

158. *Id.*

159. *Id.*

160. *Search Removal Request*, *supra* note 58.

161. Powles & Chaparro, *supra* note 120.

162. *See Reno v. ACLU*, 521 U.S. at 882 (holding the Communications Decency Act as too broad and too vague to be constitutional).

163. ATTORNEY GENERAL GUIDELINES, *supra* note 101.

164. 18 U.S.C. § 3771(a).

165. *The Trauma of Victimization*, *supra* note 113.

increase where the connection of the victims of criminal offenses to information on the Internet is constantly being brought up.

There are many ways in which information about a crime or connecting the victim to a crime can be made public which can permanently injure the victim. For example, many court documents are searchable online. Many Court systems have made their documents available on the Internet,¹⁶⁶ which can become searchable through search engines. While, as the courts have pointed out, the victim can obtain a civil no contact order or protective order to keep the courts documents sealed or use initials instead of a victim's name,¹⁶⁷ there are still ways for information to become available on the internet, particularly, when the media becomes involved.¹⁶⁸ This was exemplified in Rihanna's case¹⁶⁹ and *Florida Star v. B.J.F.*¹⁷⁰

Another example may come from private individuals who put information about an incident onto social media sites, like Twitter.¹⁷¹ Furthermore, it may come in the form of an article from some years back, where the victim may have even given an interview, but does not want the information to follow him or her forever.¹⁷²

This type of Internet connection of the crime to the victim may not just cause emotional distress, but the possibility of this connection may also prevent a victim from coming forward to report the crime. For example, if a rape victim knows there is a possibility that their information may be leaked onto the Internet after reporting their rape, they may not want to come forward with the details. At the time, they are likely already experiencing substantial emotional distress, possibly affecting their work or family life that they would not want the report to become public because it is so emotionally charged.¹⁷³

The principle policies behind crime victims' rights are to protect the victims' privacy rights,¹⁷⁴ and to encourage victims to report these crimes to the police.¹⁷⁵ Congress recognized that without "cooperation of victims and witnesses," the criminal justice system would "cease to function."¹⁷⁶ The possibility of victims not reporting these crimes hurts the criminal justice system and society.

166. See *Public Access*, *supra* note 118.

167. *Cox Broadcasting* at 496.

168. See *Abad-Santos*, *supra* note 116; *O'Neill*, *supra* note 116.

169. *Dillon & Rush*, *supra* note 3.

170. *Fla. Star* at 527-528.

171. See *Sabin*, *supra* note 116.

172. *Timberg & Sarah Halzack*, *supra* note 119.

173. *Langton & Truman*, *supra* note 114.

174. *Rebekah Smith*, *supra* note 107.

175. See, e.g., *ATTORNEY GENERAL GUIDELINES*, *supra* note 101.

176. *Id.*

FREE SPEECH SHOULD NOT ALWAYS OUTWEIGH AN INDIVIDUAL'S PRIVACY RIGHT IN THE INTERNET AGE.

There are two reasons why Google is currently not held liable for information, or links, it displays on its website. One, Google has a strong freedom of speech argument against any censorship on its site. Some courts have found that Google's algorithm is a byproduct not "free from human involvement."¹⁷⁷ Essentially, Google's PageRank system is produced by opinions from Google, and thus its search results are afforded rights as speech under the first amendment.¹⁷⁸ This means that Google may assert that its right to free speech has been infringed upon when asked to alter or censor its search results for any reason.¹⁷⁹ Two, as a host website, or Internet service provider, under the CDA,¹⁸⁰ Google cannot be held liable for most of the information posted on it as it is merely a provider of information, not the source itself. This free speech argument coupled with Google being an Internet service provider, allows it to avoid liability for virtually any content it posts on its website.

As individuals have found for decades, it is difficult to overcome free speech in attempting to protect one's privacy.¹⁸¹ While this argument may be acceptable when newspapers print information only available once a day in a news article,¹⁸² the Internet presents new problems to the intersection of privacy and freedom of speech. To an extent, the Supreme Court has agreed to this sentiment by expressing concerns with increased technological advancements and the problems it causes to individuals' privacy rights,¹⁸³ and calling for further regulations from Congress.

In addition, as the European Union mentioned, the Internet has the ability to constantly bring up information that can harm a person's reputation.¹⁸⁴ With the ease of access and with the Internet's ability to constantly display unwanted information, there is a privacy issue. This is particularly true for victims of crime, which is established in Google's data transparency report,¹⁸⁵ and is most certainly an issue for crime victims in the United States.¹⁸⁶

This is something that Google itself has even recognized in the cre-

177. *Kinderstart.com, LLC v. Google, Inc.*, 2007 U.S. Dist. at 58.

178. *Search King, Inc. v. Google Tech., Inc.*, 2003 U.S. Dist. at 11.

179. *See Langdon v. Google, Inc.* 474 F. Supp. 2d at 630 (finding Google search results and ads are speech); *Search King, Inc.* at 11.

180. *O'Kroley v. Fastcase Inc.*, 2014 U.S. Dist. at 10.

181. *See, e.g., Fla. Star* at 527-528.

182. *Id.*

183. *See, e.g., Riley v. California*, 134 S. Ct. at 2490.

184. FACTSHEET, *supra* note 41 at 1-2.

185. Powles & Chaparro, *supra* note 120.

186. Timberg & Sarah Halzack, *supra* note 119.

ation of its removal form where users requested to remove unconsented sexual imagery, or “revenge porn.”¹⁸⁷ Google acknowledged that while it “had no control over the websites to which such images were originally posted,” removing links will help “limit the damage to victims.”¹⁸⁸ Google’s search chief, Amit Singhal, believed that as it related to “revenge porn,” victims deserved to have the links removed because of the “intensely personal and emotionally damaging” nature of the information.¹⁸⁹ These “revenge porn” victims are, technically, crime victims.¹⁹⁰ Google is recognizing the very issue presented here. If narrowed down to a particularly affected group, crime victims, Google’s own speech, or even the public’s right to know, does not outweigh the potential harm to someone else when it is intensely personal and emotional information that would cause damage to that person.

Therefore, there must be heightened privacy protections for crime victims on the Internet. The policy behind crime victim’s rights (protecting their emotional and physical well-being, and encouraging victims to come forward)¹⁹¹ should be expanded to include protections of privacy on the Internet. Even though search engines may be afforded free speech rights,¹⁹² and they are not the sources of information that could harm a crime victim and thus not liable under the CDA,¹⁹³ it should be held accountable in removing the links because it makes the information more accessible to users. There is no reason why a company’s right to free speech should outweigh a crime victim’s privacy right, particularly because the individual is likely not a public figure and the victim clearly did want to be a crime victim.

As the European Union suggested in *Costeja Gonzalez*, unlike other websites, Google is a purveyor of information, making it easily accessible to millions around the world.¹⁹⁴ As the number one website in the world,¹⁹⁵ Google has the ability to do real damage to crime victims. Accordingly, the individual’s right to privacy should outweigh any free speech argument from Google.

187. Walters, *supra* note 28.

188. *Id.*

189. *Id.*

190. *26 States*, *supra* note 27.

191. Rebekah Smith, *supra* note 107.

192. *See, e.g., Langdon* at 630.

193. *See, e.g., O’Kroley v. Fastcase Inc.*, 2014 U.S. at 10.

194. “Search engines are controllers of personal data.” FACTSHEET, *supra* note 41 at 1.

195. *Top 500 Sites*, *supra* note 8.

PROPOSAL

CREATING A USABLE AND WORKABLE TEST

One thing that is evident regarding the future of the Internet is that it will continue to evolve, making it faster, more efficient, and easier to access.¹⁹⁶ As the Internet expands, it is important that society protects people that are at a greater risk of harm. As crime victims are at a greater risk, their individual privacy rights on the Internet should outweigh Google's free speech. There must be a way for the victims to remove links from search results in an efficient manner.

Under this Proposal, this test is called the Search Results Removal Test ("Test"). Taking from Google and the European Union's experience with the "right to be forgotten," the test must be specifically tailored to the objective at hand, preventing it from exponentially interfering with freedom of speech rights. Necessarily, the end goal must justify the means.¹⁹⁷

The Test's objective is to protect the privacy of crime victims. There are three ways to ensure the ends meet the means of the test: (1) make the law applicable only to specific crimes; (2) utilize evidence of a direct connection of the crime and the victim in the search results; and (3) use a reasonable person standard to determine the legitimacy of the claim.

First, the types of crimes falling applicable to the rule must be narrowed such that it relates only to certain crime victims. In order to be able to petition the courts to order search engines to manipulate the search results, the individual should be a victim of a violent crime. Victims of violent crimes are at a greater risk of harm and discrimination than victims of non-violent crimes. In fact, in a study done by the U.S. Department of Justice, 68% of victims reported they experience "socio-emotional problems as a result of their victimization."¹⁹⁸ Some examples of violent crimes include: rape and sexual assault, aggravated assault, and robbery.¹⁹⁹

Second, the victim has the duty to prove that the search result links the crime directly to the victim through evidence. The victim has the burden of providing evidence of the existence of the information on the web, and that it connects the victim to the crime committed against them.

Finally, once the relevant crime is included under the Test, the victim must then have to prove they fit into the objective "reasonable person" test.²⁰⁰ Under this test, the victim must prove that a reasonable

196. Wu, *supra* note 9.

197. *Fla. Star* at 539.

198. Langton & Truman, *supra* note 114.

199. *Id.*

200. 740 ILCS § 21/10.

person under the existing circumstances would be emotionally or physically damaged or discriminated against by having the information, which connects the victim to the crime, accessible through search engines.²⁰¹ The crime victim must pass the objectively reasonable test to ensure that the belief that the crime victim holds is legitimate and real, protecting search engines from any nonsensical claims.²⁰² Thus, while the subjective belief of the crime victim is important (for example, the victim may be fearful for their person or believe that the search results existing in the public sphere have ended up or will produce some type of discrimination), it must be objectively reasonable and legitimate in society's view in order to qualify for results removal under the Test.

WHAT WOULD THE SEARCH ENGINE MUST DO

Similar to the European Union's policy under the "right to be forgotten," Google should be given some autonomy in controlling the removal request process. This would make the process faster and more efficient for both the crime victim and Google if the process started with Google, and remained between two private parties, rather than start in the courts. However, the final determination would eventually be left to the courts if there is a dispute.

At the start of the process, Google may police their removal requests through the removal form system already in place.²⁰³ Crime victims would be allowed to request removal of the links by accessing the form and inputting all of the necessary information. Google would then assess the information and test to see if it meets the requirements for proper link removal.

If Google denies the search results removal request, the crime victim will then go to the courts. At this time, the courts will determine if that victim's claim is objectively reasonable under the test. If the victim meets their burden under the Test, then Google would need to alter their results within 60 days of the final court judgment.²⁰⁴ The courts would have the responsibility of making true determinations under the Test, and for holding Google responsible.

In the European Union, Google completely removes the search re-

201. See 740 ILCS § 21/10 (This test is similar to the test for victims to receive a stalking no contact order from the court, which is employed by many states. Illinois, for example, defines a "reasonable person" as a "person in the petitioner's circumstances with the petitioner's knowledge of the respondent and the respondent's prior acts.")

202. *Id.*

203. *Remove Information from Google*, GOOGLE SUPPORT, <https://support.google.com/websearch/troubleshooter/3111061#ts=2889025,2889026> (Last visited Sept. 11, 2015).

204. REPORTERS WITHOUT BORDERS, *supra* note 61.

sult links from its database. This is a severe approach that should only be done in severe cases. For potential life threatening or fear-for-safety situations, the link should be removed from Google search results entirely. This should be done to protect the crime victim from further potential harm and determined on a case-by-case situation.

However, for every-day removal requests, for example: in cases of discrimination, Google would not need to remove the link from its database system, but rather alter its algorithm to remove information connecting the victim to the crime for at least the first six pages of results. Essentially, this would make the PageRank for those links lower than other content, making it less likely to be accessed.²⁰⁵ Any connection between the victim and the crime committed against them could thus be found later on in search results.

The costs associated with this Test are monetary, from the potential need for hiring new employees to guide the removal process, and in loss of free speech. Allowing Google to use its own removal form could cut some costs for Google. Specifically, Google would no longer need to create an entirely new system or go to court every single time to litigate a dispute.²⁰⁶ Google already has a similar process in place, including allowing crime victims of revenge porn to remove sensitive information.²⁰⁷ It can utilize a similar system for this particular group.

In addition, moving the link further down in search results keeps Google from completely losing its free speech right in its search results. Essentially, there would be boundaries set on the speech, on where it can be seen, rather than stifling the speech altogether. The Test also allows for more free flow of information in that the information may still be accessed through Google search, but chances of it hurting the victim's reputation or furthering discrimination against the victim are lower.

The test would work similarly to how a protection order is administered in the criminal system in many states. The Test may be applied using a variation of the facts in the 1989 Supreme Court case *Florida Star v. B.J.F.*²⁰⁸ In that case, a rape victim's name was published in a newspaper article in conjunction with information about the case. Let's say that then the link to the article was posted on a blog, which also included her full name and information. When B.J.F. searched her name in Google, the blog post was showing up in the first few pages of the search results.

In order to remove the search results, B.J.F. would first need to go to Google's removal form page. Second, B.J.F. was a victim of a rape,

205. *Google Result Positioning*, *supra* note 22.

206. *FACTSHEET*, *supra* note 41 at 5.

207. *Walters*, *supra* note 28.

208. *Fla. Star* at 526-530.

which is a violent crime, making her fall under the Test.²⁰⁹ Third, B.J.F. would then need to show that a reasonable person would believe that having the link to the blog in the initial pages of Google's search results could cause potential discrimination or is physically or emotionally damaging. In the case, B.J.F. testified to having suffered severe emotional distress, received threatening phone calls from strangers, and, as a result, had to change her telephone number and residence.²¹⁰ Likely, an objectively reasonable person would believe that having the information up on the Internet and in Google search results would lead to emotional and/or physical damage. By having the information in the public, B.J.F. was receiving threats, which a reasonable person would likely find would lead to emotional and physical damage. This evidence satisfies the Test as it is objectively reasonable, thus either Google or the court should prescribe link removal.

This Test can also be applied using the facts surrounding Chris Brown's assault of Rihanna as well. First, information surrounding the assault was plastered all over the media and, subsequently, the Internet, after it occurred. Second, Rihanna was a crime victim. Particularly, Rihanna was a victim of the violent crime of felony assault. Third, in order to get the information removed under the Test, she would need to prove that a reasonable person in the existing circumstances would believe that having the information surrounding her assault on the Internet would lead to discrimination, or emotional and/or physical damage. Here, not only is Rihanna's name and persona attached to the incident, but there were actual pictures that were readily identifiable as Rihanna on the Internet. An objectively reasonable person would likely find that having pictures of Rihanna's face, post-assault and several injured, displayed on Google images search results, along with articles explicitly describing the intimate details of the assault, would likely lead to severe emotional damage and potentially job discrimination. Thus, Google would have to take down links surrounding Rihanna's assault.

CONCLUSION

In 2015, in an interview in *Vanity Fair*, Rihanna spoke out about some of the experiences she had because she was a victim of felony assault, and domestic violence.²¹¹ Despite her success in the music industry, there were still instances where Rihanna felt that, as a victim of domestic violence, she was continuously being punished over and over

209. Langton & Truman, *supra* note 114.

210. *Fla. Star* at 528.

211. Robinson, *supra* note 11.

again.²¹² She spoke of an incident where her song was not used because of her connection with being a victim of domestic violence and largely spoke of the hardships she endures because of the daily reminders.²¹³ She stated that she just wanted to move on with her life.²¹⁴ This must be impossible for Rihanna as the post-assault photo is still up on Google images for the world to see.

This is an experience that many victims of domestic violence share. It is sometimes far too easy to locate information on the Internet, which turns into a constant reminder of what happened to the victim. If Google's search chief believes that foolish acts of minors should be afforded the "right to be forgotten" and removed from search results, then crime victims, who did not choose to be victims, should be given that option as well.²¹⁵ These individuals become victims entirely by force. Therefore, they should have a choice regarding what information is available on the Internet connecting them to that crime committed against them.

Google is the number one website in the world.²¹⁶ It makes everyone's life easier by placing an infinite amount of the world's content in one URL. Yet, that ease of access to information can negatively impact people's lives when undesirable or traumatizing information is put on Google without their consent. The "Search Results Removal" Test will significantly eliminate much of the burden on crime victims, other related parties, and create a stronger privacy protection of the people of the United States. If implemented, crime victims, such as Rihanna, could get the much-needed relief they seek in separating themselves from the crimes committed against them.

212. *Id.*

213. *Id.*

214. *Id.*

215. Tibken, *supra* note 35.

216. *Top 500 Sites*, *supra* note 8.

