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The European right to be forgotten: A challenge to the United States Constitution's First Amendment and to professional public relations ethics

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ABSTRACT

This paper explains how the European right to be forgotten violates the free flow of information in society, as evidenced by conflicts with the United States Constitution and ethical principles of professional communicators worldwide. As Europe imposes new data protection laws and incorporates the right to be forgotten that promotes censorship through search engine de-linking, United States constitutional law scholars ponder the implications of World Wide Web censorship, while journalists and public relations professionals struggle to understand how accurate transparent communication could occur in an ecosystem that allows for arbitrary information removal and the creation of memory holes. This article explains why the European notion of the right to be forgotten challenges U.S. constitutional law and professional public relations ethics, imperiling the online marketplace of ideas and eroding disclosure of information. The European Data Protection Directive and recent right to be forgotten movements directly conflict with the U.S. Constitution's First Amendment and professional communications ethics codes. The First Amendment of the U.S. Bill of Rights indicates the specific rights of citizens to freedom from government intervention into freedom of expression and freedom of the press. Recent actions by Google to honor European requests to remove data upon request collide with First Amendment theoretical concepts and contemporary constitutional law. Both the Public Relations Society of America (PRSA) and the International Association of Business Communicators (IABC) construct ethical principles for members that call for the active promotion of the free flow of information and the ethical disclosure of information. The European Data Protection Directive's right to be forgotten silences these core professional communication ethics and more significantly imperils the robust information exchange in a global society, ultimately altering the discourse and debate in democratic countries. This paper addresses the status of the right to be forgotten in the United States and indicates how adopting such a provision in the United States would violate First Amendment theories, as evidenced by the Marketplace of Ideas Theory, the Meiklejohnian Theory, and the Absolutist Theory, and would counter traditional public relations ethics codes, conducted in a context of dialogic ethics that calls for adherence to core values advocating for transparency, disclosure, and free flow of information.

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1. Introduction

The implementation of the European Data Protection Directive's "right to be forgotten" challenges United States Constitutional principles and conflicts with well-embraced communications theories to promote information exchange in a free society. While consumer advocates in the United States today urge the Federal Trade Commission to adopt similar right to be forgotten provisions similar to Europe laws regulating online activities, the movements challenge First Amendment theoretical frameworks, notably the Marketplace of Ideas Theory, the Meiklejohnian Theory, and the Absolutist Theory. While it has been asserted that privacy law in the U.S. may be applied or adapted to conform with the right to be forgotten in the U.S., the implementation of this new stream of privacy law controverts First Amendment principles. Digital privacy, concerned with the secure maintenance of online personal information, has conjured new dimensions in the right to privacy debate in the U.S. and in Europe. The implementation of the right to be forgotten in an era of big data assumes the creation of a grand arbiter who administers decisions on content removal, thus threatening the free flow information by placing the power of content judgments in a centralized, non-judicial source. The arbitrary creation of a private "data controller" offends the First Amendment by precluding the free flow of information, creates memory holes, and endangers the robust debate that characterizes the nation and serves as a foundation for the nation's democracy. The First Amendment, ratified in 1791, has endured numerous disruptive media forces, including the advent of mass-produced newspapers, radio, television, satellite, cable, and online search engines. The tenets of the First Amendment are integral to the United States experience of freedom of expression and protection from government intervention in media operations. Today, professions like journalism and public relations guided by ethics codes that advocate for the free flow of information and disclosure in society, are now forcefully rejecting movements to eradicate data under the "right to be forgotten."

At issue in this debate is the "right to be forgotten," a notion that has captured the attention of scholars and legal analysts in the United States and abroad. The notion of the right to be forgotten, which may be defined as third parties "forgetting" your past, is a topic of controversy among legal scholars, government officials, and the private enterprises that now confront the issue of government intervention in data control matters. The term, "right to be forgotten," was proposed in the 2012 draft of the European General Data Protection Regulation in Article 17, stipulating that an individual should have the right to apply for data removal (Gilbert, 2015). The European terminology has encompassed various characterizations such as "oblivion," allowing for the full deletion of certain public data, to the "right of erasure," removing personal data at the subject's request, leading to confusion among legal scholars about the precise definition and implications of the right to be forgotten (Ambrose & Ausloos, 2013). Today, the right to be forgotten remains a topic of concern in light of the European Data Protection Directive as search engines such as Google move to implement the regulation. The European Parliament and Council modernized the data protection rules in place since 1995 by incorporating the right to be forgotten and the right to notification when data has been hacked (European Commission News Release, 2015). The moves follow numerous memoranda and public statements indicating the legal grounding for the Act, including a May 2014 ruling by the Court of Justice of the European Union found that certain users may ask the search engines to remove results for queries involving the person's name. Google stipulates the results shown must be "inadequate, irrelevant, no longer relevant, or excessive" (Google, 2015a,b, FAQ), setting forth qualitative measures that can be arbitrarily enforced.

The administration of right to be forgotten provisions present complications, particularly for media companies and search engines operating on U.S. soil. For opponents of both the regulation and the implementation of the right to be forgotten for search engines in the U.S., a wealth of media law issues apply, including constitutional arguments about the First Amendment. Constitutional theories of the First Amendment are relevant as activists opposing government regulation of the data assert violations of the free flow of information. The Marketplace of Ideas Theory, with origins on the works of John Milton and John Stuart Mill, was articulated by U.S. Supreme Court Justice Oliver Wendell Holmes, Jr. in 1919 in a Supreme Court dissenting option in Abrams v. United States, who stated "ultimate good desired is better reached by trade in ideas – the best test of truth is power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution" (Abrams v. United States, 1919). The ubiquity of the Internet enables global communications channels, thus broadening the marketplace to encompass ideas created by both journalists and citizens. Closely tied to principles of market economics, the Marketplace of Ideas Theory resonates throughout American culture and has served as a foundation for the public relations profession, as evidenced by the PRSA ethics code of conduct urging advocacy for the free flow of information (PRSA, 2016). A second theory that may be invoked to counter the application of the right to be forgotten in the United States is the Meiklejohnian Theory, a tenet that holds freedom of expression is a means to successful self-government, thus a fundamental aspect of democracy (Pember & Calvert, 2015). Lastly, constitutional scholars may point to the Absolutist theory of the First Amendment to validate that government may adopt no laws to abridge freedom of expression. Articulated by U.S. Supreme Court Justice Hugo Black, the Absolutist theory has not prevailed, but instead has been limited by laws created to restrict speech for national security and public tranquility (Middleton & Lee, 2011). However, the Absolutist theory provides a central argument against government intervention into media and the free flow of information.

With an adherence to professional values and the proliferation of ethics in public relations curriculum (Hutchinson, 2002), this article addresses professional code provisions protecting the free flow of information and disclosure requirements found in leading public relations codes of ethics, paving the way for dialogic communication and ultimately the practice of dialogic ethics. The Public Relations Society of America (PRSA) Code of Ethics and the International Association of Business Communicators (IABC) Code of Ethics call for sustained access to an open marketplace of ideas. The incorporation of the

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right to be forgotten does not simply violate the code of a public relations individual, but rather directly threatens the free flow of information in a society thus violating a core value of an entire profession. This article explains why the right to be forgotten meets forceful opposition for both legal and ethical reasons in the U.S.

1.1. Global "right to be forgotten" legal actions

The current circumstance for the right to be forgotten represents the result of legal actions in Europe. In May 2014, the Court of Justice of the European Union (CJEU) delivered a ruling in Google Spain SL, Google Inc. v. Agencia Espanola de Proteccion de Datas (AEPD), Mario Costeja Gonzalez. In the legal action, Costeja, a Spanish lawyer, sought removal of online information from a Catalonian newspaper and Google about a real estate sale in conjunction with bankruptcy proceedings, under the presumption that the proceedings were resolved and no longer relevant. While the notices on the newspaper site were deemed lawful, the AEPD ordered the removal of the Google links. This ruling has been credited as establishing the "right to be forgotten," as articulated in the 1995 Data Protection Directive (DPD) (Lindsay, 2014), and further, this case applied the DPD to search engine operators for the first time. The Costeja case thus called into question the policies and data activities of Google and other search engines worldwide. Through this case, Google and other search engines were deemed "data controllers" and thus subject to the provisions of the Data Protection Directive.

Today, Google, a multinational company and frequently used worldwide search engine tool, is currently addressing the global issue surrounding the implementation of the "right to be forgotten." In February 2016, Google announced it would extend the right to be forgotten to all of the company's localized domains accessed in the European Union (Gibbs, 2016). In light of these movements, pressure in the United States continues to mount as the European standard extends through Google's global reach. Decisions in Europe to adopt the right to be forgotten and subsequent cases have prompted U.S. privacy activists to take action and advocate for the similar implementation, claiming that the failure to do so in the U.S. is an unfair business practice (Consumer Watchdog, 2015a,b). The questionable status of the right to be forgotten in the United States gives rise a multitude of First Amendment issues that prompt debate about the role of individual privacy, legal intervention, and the retention of historical events. Further, the origin of the debate has deep historical roots, as the European notion of privacy is derived from the concepts of dignity, honor, and personal respect, in contrast to the United States privacy tenets that rely on the notions of liberty and protection from state intervention (Whitman, 2004). The contemplation of a U.S. right to be forgotten occurs in a multicultural environment, where differing values are placed on privacy.

1.2. Right to be forgotten as a threat to the free flow of information

The U.S. legal system must now address an array of legal concerns about the notion of the "right to be forgotten." Critics argue that Google's refusal to grant right to be forgotten rules in the U.S. can be characterized as unfair and deceptive business practices (Gross, 2015). Today, the United States Federal Trade Commission possesses formal letters that urge them to dismiss requests to honor "right to be forgotten" requests in the name of fair business practices. Consumer Watchdog wrote a letter to the FTC arguing that Google's failure to offer U.S. users the ability to remove search engine links as Europeans can do indicates an unfair and deceptive business practice (Consumer Watchdog, 2015a,b). The Association of National Advertisers sent a letter to the FTC on July 31, 2015, stating that the incorporation of a right to be forgotten in the United States would contradict constitutional protections and endangers free expression of speech found in the First Amendment (ANA, 2015). While Consumer Watchdog asserts that the refusal to grant Google removal requests in the U.S. violates Section 5 of the Federal Trade Commission Act (Consumer Watchdog, 2015a,b), the Association of National Advertisers states that similar provisions for the United States would allow American companies to edit the past under the supervision of federal government regulators (ANA, news release 2015).

A central theme of discussion in the application of "right to be forgotten," focuses on the application of United States privacy law. Scholars have attempted to apply the full body of privacy law in the United States to the "right to be forgotten," providing a potential framework for consideration and application of the regulations, if applied in the U.S. (Rustad & Kulevska, 2015). Others have considered the application of United States privacy tort issues such as the publication of public disclosure of private facts when contemplating adoption of the right to be forgotten (McNealy, 2012). Yet others have argued there is an absence of a legal basis for the "right to be forgotten" (Ambrose, 2013). While it has been indicated that forgiveness principles are found in the American legal system, particularly related to bankruptcy, credit records, and juvenile criminal records (Bennett, 2012; Blanchette & Johnson, 2002), attempts to restrain the flow of information via online search engines do not aptly evoke privacy law in the United States. Instead of the emphasis on privacy, right to be forgotten opponents cite constitutional principles and communication ethics as evidence that implementation of the right compromises the free flow of information in a democratic society. Movements to protect digital privacy, encompassing personal and financial data transferred and stored online, have unearthed key cultural and ethical differences between citizens of Europe and the U.S. about the notion of privacy.

Despite attempts to justify the right to be forgotten in the United States within a privacy framework, the constitutional concerns remain about the violation of fundamental First Amendment principles to preserve freedom of expression and prevent government intervention. By centralizing information control with a search engine, the marketplace of ideas is in danger of becoming filtered or warped, based on the viewpoints of the censor. Three specific constitutional theories are evoked to counter the movements to incorporate the right to be forgotten in the United States: The Marketplace of Ideas,

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Miekljohnian and Absolutist theories for the First Amendment. By grounding the opposition to the right to be forgotten in the constitutional theories, a correlation to communications ethics codes is rationally identified. The right to be forgotten violates professional communications codes designed to protect the free flow of information in a democratic society.

1.3. Marketplace restraints as violation of public relations ethics

To better understand the violation to public relations ethics that occurs when memory holes are created in Internet search engines, it is important to first recognize the grounding for public relations ethics and explore the maturation of ethical principles in the industry, particularly in light of the digital age. This paper explores the notion of dialogic ethics and its intersection with the practice of public relations. This article elaborates on the well-embraced notion of the marketplace of ideas and reveals how dialogue in the digital environment poses a new marketplace that must have the same laissez-faire regulation, allowing for notions of truth and ultimate "good" to emerge from the discussion. Professional communicators, operating under the contemporary codes stemming from deontological frameworks focusing on obligations and duties, remain bound to hold the marketplace open despite movements to impair the marketplace, thus underscoring adherence to dialogic ethics in post-modernity. The notion of the "marketplace of ideas," has been intertwined with public relations through Excellence Theory (Grunig, 1992), and extended through symmetrical communication theories. From an ethics perspective, communication scholars indicate a dialogic turn in the post-modern world (Arnett, Arneson, & Bell, 2006; Kent & Taylor, 2002). Today, the dialogue occurs in the online realm, allowing for the creation of a "virtual" marketplace of ideas. The online landscape is the new marketplace for dialogue, and public relations professionals are active purveyors of information in the digital age. Scholars assert that threats to the free exchange of ideas should be condemned by the public relations practitioner (Coombs & Holladay, 2007). This paper explores the trajectory from dialogic ethics to the intersection with public relations and the embraced notions of the marketplace of ideas. The paper impugns erasure as a violation of the marketplace and calls for public relations professionals to reject such movements.

2. Eroding the marketplace of ideas: legal and ethical implications

First, the establishment of the right to be forgotten contradicts the notion of the marketplace of ideas and imperils the free flow of information in our society. The marketplace thus loses an inventory of information at the arbitrary hands of a search engine that liquidates data as the requests arrive. If the FTC were to allow Google to remove data, based on the request of individuals, Google is positioned to become a grand arbiter of information and thus may monopolize the marketplace with specific social, political, and economic ideas. Google's transparency report indicates that since May 29, 2014, the company has received 318,269 in Europe requests, and has removed 41.6 percent of the requests (Google, Transparency Report, 2015). As Google implements the "right to be forgotten," the process itself may be characterized as arbitrary or decentralized. Google states that the process begins when a web form is initiated by an individual and is then reviewed on a case-by-case basis, considering the information's accuracy, timeliness, and public interest (Google, Transparency Report Frequently Asked Questions, 2015). The right to be forgotten opposes the Marketplace of Ideas theory because it diminishes the ability of people to participate in the marketplace, it disrupts the natural process of communication, and it may misappropriate the marketplace regulation to a legislative function, rather than marketplace participants (Larson, 2013).

The robust marketplace of ideas encounters trouble as information is lost and the currency of accuracy is no longer valued. The accurate re-telling of information is left in the bankruptcy court with no chance of resurrection as the information disappears. The right to be forgotten shuts down information transactions, obliterates accuracy, and imperils freedom inherent in the marketplace of ideas. Under the right to be forgotten, the power to control information rests with "data controllers" like Google and other search engines, which determine the availability of information in the Digital Age. Recorded "truth" will become an optical illusion, as search engines remove data. The Public Relations Society of America Member Code of Ethics, originally crafted in 1950 and revised in 2000 provides a code provision for the free flow of information (PRSA, 2016). The code of ethics states a core principle that "protecting and advancing the free flow of accurate and truthful information is essential to serving the public interest and contributing to informed decision making in a democratic society" (PRSA, 2016). The code further asserts that public relations professionals will "preserve the integrity of the process of communication." Public relations scholars (Heath, 2006) contend that dialogue is a way to engage with key publics, and that the market forces a condition whereby the best ideas rise to the top. The marketplace dynamics therefore suggest the use of dialogic dimensions and presume a position of dialogical ethics. Scholars (Grunig, 2001; Habermas, 1984) have asserted that dialogue facilitates ethical communication. Public relations scholars have suggested dialogic communication as a prevailing theory of public relations (Kent & Taylor, 2002) and have called for dialogic dimensions in the implementation of strategic communications plans (Botan, 1997). Today, public relations scholarship remains distinguished from other disciplines like marketing by the skill of public relations practitioners to formulate relationships by fostering a mutual orientation (Smith, 2012).

2.1. Communications ethics codes and free flow of information

While the PRSA ethics code articulates a U.S.-centric perspective, the free flow of information is valued globally. In an analysis of 107 ethics codes for public relations, free flow of information has been characterized a relativistic value, similar to the understanding of fees and gifts (Kim & Ki, 2014). Therefore, the free flow of information remains exercised in various

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degrees per the country's law and cultural limitations. Globally, the World Public Relations Forum has adopted the Stockholm Accords that encourage communicators to apply skills and tools to "interpret stakeholder's and society's expectations as a basis for decisions." (WPRF, 2010). Further, the accords state that professional communicators must conduct activities to enhance transparency and trustworthy behavior (WPRF, 2010).

The right to be forgotten conflicts with these principles by compromising the continuity of accurate information instead of respecting the free flow of information. Further, the integrity of the communication process is irreparably harmed when information is taken away from the search engine, leaving a gap in history. Yet professional communicators in the United States and abroad have a long history of advocating for the protection of free flow of information. The International Public Relations Association (IPRA) code, which served as a foundation for multiple national public relations codes, maintained a strong linkage to the United Nations' Universal Declaration of Human Rights (Watson, 2014). An examination of Article 19 of the UN Declaration asserts, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (United Nations, 2016). The declaration's language remains relevant to the current technology-driven information society and underscores the fundamental human right to have ideas shared through search engines as any media. Yet while no global ethical standards for public relations have emerged, core professional values have been identified by scholars citing aspects of professionalism, advocacy, moral standards, clients' interests, expertise, and relationships (Taylor & Yang, 2015).

By examining the history of the PRSA Code, insights are gained about the adherence and reverence to the paramount value of the free flow of information in society. The PRSA code was originally drafted two years after the formation of the society. The document was revised five times before the 1988 iteration that for the first time recognized the dual obligation to the client and the democratic process (Fitzpatrick, 2002b). The declaration of principles of 1988 states: "Members of the Public Relations Society of America base their professional principles on the fundamental value and dignity of the individual, holding that the free exercise of human rights, especially freedom, freedom of assembly, and freedom of the press, is essential to the practice of public relations." (Fitzpatrick, 2002b). Without the ability to accurately gather information, some question the ability of democracy to appropriately function. Scholars (Aiello & Proffitt, 2008) have argued that citizens in a functioning democracy must have access to information to make "reasoned, rational decisions." In this ecosystem, the audience takes an active role questioning authority, seeking additional information, and forming relationships with others. Yet, if the information is no longer accessible, the decision-making process is imperiled. The incorporation of the right to be forgotten calls into question freedom and democracy because news media and everyday citizens no longer have access to an accurate recollection of facts and occurrences in public life. While some advocates would argue this sacrifices privacy, the U.S. adherence to tenets of liberty and freedom from government intervention provide a strategic foundation for arguments against a right to be forgotten environment.

2.2. Dialogic ethics in public relations

The nature of dialogic ethics lends itself to an understanding of marketplace engagement. It has been asserted that dialogic ethics "listens" to what is before one, considers history and negotiates new possibilities (Arnett, Fritz, & Bell, 2009) and that dialogic communication is more ethical based on dimensions of honesty, truth and positive regard for the other (Kent & Taylor, 2002). This paper asserts that the marketplace of ideas functions as a concept contiguous to dialogue, allowing for the application of dialogic ethics. Historically the rhetorical tradition of public relations and accompanying aspects of persuasion have allowed for the marketplace of ideas notion to proliferate among codes of ethics (Heath, 2009). Scholars have cited marketplace principles such as access, process, truth, and disclosure as templates for monitoring ethical validity of public relations practices (Fitzpatrick, 2006). This paper asserts a specific connection between public relations ethics codes, the marketplace of ideas, and post-modern interpretations of the dialogic ethics for communication. The dialogic learning theory of communication ethics has been called a form of post-modern literacy (Arnett, Bell, & Fritz, 2010), but scholars and public relations professionals must advance the thinking of dialogic ethics online within the context of the marketplace of ideas. To illustrate the varying viewpoints, while advocacy ethics has been aligned with marketplace theory, (Fitzpatrick, 2006), others critique aspects of virtue ethics for providing too much latitude for practitioners (Harrison & Galloway, 2005). The advocacy role of the public relations professional has been identified as contradiction for ethical behavior in the marketplace (Fawkes, 2012), however, the role of the public relations professional as contributor to the free flow of information must be revisited in a global atmosphere where information can be removed from search engines. Under this circumstance, the marketplace doesn't have the opportunity to function properly as it is riddled with gaps of information.

The emergence of new media forms mandates further discussion about ethical codes, and scholars have called for the strategic discussion of dialogic dimensions (Archer, Pettigrew & Harrigan, 2014; Rybalko & Seltzer, 2010). Some have called for ethics in blogging activities (Smudde, 2005), and blogger engagement guidelines in the context of dialogic encounters (Langett, 2013), while others have suggested that democracy may be improved through online dialogic dimensions (Kent, 2013). While it has been suggested that public relations practitioners serve as ethical counsel (Bowen, 2008) to the organizations that they serve, or that they function as an "ethical guardian" (L'Etang, 2003), the role of the public relations professional must undergo greater scrutiny in the dialogic environment. Critique includes the notion that dialogic ethical integrity only holds up when considering the deontological framework of two-way communication under a means-based approach in contrast to an ends-based utilitarian approach where flaws are revealed (Browning, 2015). Further, scholars recommend greater study of dialogue in international contexts (Paquette, Sommerfeldt, & Kent, 2015) to discern the role of

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the public relations professional. Further, the question remains whether the notion of dialogue has been misappropriated to two-way symmetrical communication, impairing the maturation of a dialogic theory of public relations (Theunissen & Noordin, 2012).

3. Research question and methodology

The nature of this research addresses provisions of communications ethics codes designed to protect the free flow of information in society. Specific provisions and core values contained in codes about the activities of professional communicators may counter legal movements to delink information on search engines. In particular, this study is aimed at determining how the right to be forgotten conflicts with fundamental core values in the Public Relations Society of America (PRSA) and International Association of Business Communicators (IABC) Codes of Ethics. Both organizations are leading professional organizations with active members in the United States. The theoretical rational for this article is based on the marketplace of ideas theory and the influence of the marketplace on dialogic ethics in public relations. The research question framing this study is:

RQ: How do specific provisions in contemporary communications codes of ethics oppose recent international legal efforts to delink information from search engines and censor Internet information?

The methodology for this study included a systematic review of the codes, examining text for specific words, including transparency, marketplace and contiguous concepts related to the free flow of information in democracies. This report analyzes findings based on the text of two codes, embraced by thousands of professional communicators in the United States and abroad.

4. Threats to debate, democratic principles, and disclosure

The free flow of information is a bedrock principle in United States law under the Bill of Right's First Amendment declaration to protect free speech and prevent the abridgement of freedom of the press. One of multiple theories of the First Amendment, the Meiklejohnian Theory emphasizes the role of freedom of expression in connection with the ability for citizens to gather information to make informed decisions to vote and thus self-govern (Pember & Calvert, 2015). As citizens utilize the marketplace of ideas to share information about society, it can be argued the right to be forgotten threatens robust debate by diminishing the availability of information that can contribute to the democracy's self-governance (Larson, 2013). Social, economic, and political trends could be misidentified or misconstrued if information is withdrawn from the marketplace under the "right to be forgotten." The crystal-clear clarity of the transparent condition is completely obliterated when it resides in a circumstance of information absence. A citizen cannot see what is no longer there. Under the right to be forgotten, the search engines eradicate the traces of memory previously employed by journalists to assemble a story about a political candidate, a social concern, or public happening. Under the right to be forgotten, information may be deemed irrelevant at the time, but may become relevant as an individual enters public life (Wechsler, 2015). Curious journalists and public relations professionals enter an awkward void of information. Transparency disappears when information is eradicated. The free flow of information cannot be allowed to evaporate in the environmental conditions of the "right to be forgotten," as evidenced by constitutional law and professional communications ethics codes.

4.1. Disclosure, marketplace tenets, and free flow of information in ethics codes

Disclosure of information is a core principle found in the Public Relations Society of America member Code of Ethics (PRSA, 2016). The principle states, "open communication fosters informed decision-making in a democratic society. The intent of the core principle is to build trust with the public by revealing all information needed for responsible decision-making (PRSA, 2016). The example of improper conduct for this provision is "lying by omission." For example, the code says a practitioner who knowingly fails to disclose required financial information, giving a misleading impression of the corporation's performance would violate the code (PRSA, 2016). It has been indicated that public relations professionals serve as the ethical conscience for clients and corporate employers, supporting transparency and information exchange on a corporate level, and ultimately, a societal level (Bowen, 2008). Thus, the right to be forgotten allows for a proliferation of "lying by omission," because facts are plucked from the search engine omitting information that may otherwise be disclosed in an open information society. The International Association of Business Communicators also set forth a code of ethics that recommend that members, "engage in truthful, accurate, and fair communication that facilitates respect and mutual understanding" (IABC, 2016). A further argument suggests that the right to be forgotten eliminates complete truthful and accurate communication, and this indicates that the legal government intervention contradicts well-embraced communications ethics. The IABC code further states, "professional communicators understand and support the principles of free speech, freedom of assembly, and access to an open marketplace of ideas and act accordingly" (IABC, 2016). Both the PRSA and IABC codes underscore the imperative of an open marketplace of ideas in society. While voluntary membership in communications professional societies makes these codes effectively unenforceable (Huang, 2001), the codes themselves have been characterized as "aspirational" and "educational" (Fitzpatrick, 2002a).

Both codes further insist that professional communicators strive for truth. The quest for truth and accurate recounting of societal events is called into question by the legal intervention of the "right to be forgotten." In what has been called a great

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gift to media ethics theory, Emmanuel Kant called for transparency in communication, giving public relations professionals a rallying point for authentic communication (Plaisance, 2007). The risk associated with concealment or eradication of information designed to retard transparency has dire societal consequences. By contravening transparency, the stage is set for deception (Plaisance, 2007). For citizens and news gatherers in the right to be forgotten atmosphere, transparency is obscured by information holes and characterized by a void. By placing the free flow of information in jeopardy, the ability of citizens to evaluate the centers of power is placed into question, and the notion of rational decision-making may be altered by the creation of memory holes in the search engines. In the contemporary media-saturated society, the advent of "monitorial citizens" have been observed (Schudson, 2003), as citizens review online content and utilize all technology-enabled tools to scrutinize public issues (Feenstra, 2014). Citizens now perform a watchdog role on institutions of power by scouring information. The right to be forgotten can cripple the citizen watchdogs as the information revealed on the search engines is no longer a complete depiction of the situation. Further in communities with open media systems, protesters can organize and assemble, allowing citizens to articulate their voice in a democracy. In a right to be forgotten atmosphere, search engines may still exist, but they will not be functioning as the valuable tool they once were. In consideration of the Habermas Theory of Communicative Action (Habermas, 1984, 1987) stating that communication is a multi-dimensional process encompassing the criteria of intelligibility, truth, trustworthiness, and legitimacy, the right to be forgotten pierces the integrity of communication on multiple fronts, forever changing the discourse that guides understanding.

4.2. Government intrusion in media communication

The contemplation of these issues must occur within the context of the First Amendment, with careful consideration of the initial phrase, "Congress shall make no law." The Absolutist Theory of the First Amendment has been interpreted to dictate that the propositions of the First Amendment are absolute and that government may adopt no laws whatsoever that abridge freedom of expression (Pember & Calvert, 2015). With this in mind, the hypothetical administrative construction of a law by a federal agency like the Federal Trade Commission to address the right to be forgotten directly attacks the First Amendment provision that Congress shall "make no law" restricting free speech. A federal agency thus stands in a precarious position as consumer advocates plea for application of the right to be forgotten in the United States. It may be argued that the First Amendment considerations therefore outweigh the movements for increased privacy accomplished through government intervention in data publishing on search engines. While Article 10 of the European Convention on Human Rights states that freedom of expression can be limited for the protection of the reputation or rights of others (Wechsler, 2015), it may be argued that government intervention is more dangerous. Government intervention places a surgical knife into the hands of the search engine, giving the amateur decision-maker prevailing power over content decisions. The introduction of government intervention into search engine data can foretell an environment in which government requires private companies to alter data, surrender information, or eliminate unpalatable information. Public relations professionals who have long advocated for transparency will fall to the whimsy of search engine content decision-makers. Public relations professionals remain active opponents to government intervention. For example, the public relations industry successfully argued regulation for video news releases could have a chilling effect on open communication and work against providing the public with vital, interesting information from myriad points of view and sources (PRSA, 2005).

It has been asserted that journalists and public relation professionals perform vital roles in a fully functioning society by virtue of providing information to citizens and assisting relationship formation across social, economic, and political sectors (Yang, Taylor & Saffer, 2016). In light of this vital role, professional communicators are urged to reject the right to be forgotten for its effrontery on the marketplace of ideas. Instead, public relations professionals are obliged to hold the market open with a diversity of information that permits informed citizenry to make democratic decisions. The ethics codes of various professional communications organizations provide a framework for understanding the impending danger from information erasure on search engines. The evolution of new technologies denotes a time for revisiting ethics codes, consistent with the core value that adaptations and industry standards mandate code revisions (Fitzpatrick, 2002a). In addition to providing information and catalyzing relationships in a society, the public relations industry serves an important role in a democracy by fostering an open communications environment that allows for robust debate. Further, the ethical practice of public relations facilitates stakeholder engagement and democratic participation through communication processes that allow for questioning of power and dissensus (Holtzhausen, 2015).

5. Conclusion

The impact of the European legal notion of the right to be forgotten on online search engines gives rise to a myriad of legal and constitutional issues for the United States, and manifests serious questions about the macro issues of internet data, privacy, and the role of the public relations professionals in proliferating atmospheres of free flow of information. An emerging tug of war blooms throughout the globe between privacy activists who seek the ability to have information de-linked and First Amendment advocates who claim search engine removal policies "rewrite history" and lead to arbitrary censorship. The compelling need to maintain digital privacy through the control over personal information is now an integral component of privacy discussions. This conflict creates a conundrum for public relations professionals, who are guided by ethical principles to promote a free exchange, yet realize that the right to be forgotten could lead to information censorship and threaten core values. The Google search engine crosses international borders, complicating the administration of the right

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to be forgotten in the United States as privacy activists urge federal authorities to apply similar standards in the United States. For public relations professionals, it is relevant to consider the active free flow of information within the context of dialogic ethics. The commonly held two way-symmetrical theory of public relations (Grunig & Grunig, 1992) aligns with dialogic ethics, allowing public relations professionals to build relationships with key publics. This dialogue may be interrupted by the right to be forgotten. This paper asserts that the free flow of information in society is imperiled by movements to censor and de-link search engines. First Amendment scholars critique the right to be forgotten as unconstitutional by virtue of the Bill of Rights, citing First Amendment constitutional foundations such as the Marketplace of Ideas Theory, the Meiklejohnian Theory, and the Absolutist Theory as proof points for the repudiation of the "right to be forgotten." Professionals in public relations and journalism question aspects of government intervention and arbitrary information control. In what have been coined as "deciders" (Rosen, 2012a,b),the workers at Google and other search engines stand to inherit great power of information management that in the United States counters the First Amendment. The consolidation of power at the helm of the search engine leaves the United States adrift from the fundamental principles of the free flow of information that is integral to the practice of democracy. Further, the global internet may be diminished in freedom and openness that it presents today. The transnational legal and economic issues must be addressed in the context of global standards, which may not be compatible when considering the value of privacy rights in Europe in contrast to the protection of free speech rights in the United States.

The notion of privacy rights remains central to the discussion of the "right to be forgotten." European citizens appear to at times attach greater value to digital privacy than residents of the United States, who often place freedom over expression in a preferred position to privacy. The European Data Protection Directive prescribes changes for its member countries, and in doing so has activated similar calls for data protection in the U.S. However, similar actions in the U.S. remain stifled by an adherence to the First Amendment. The path forward is populated by many pitfalls. Vigilance to new technologies and respect for culture differences are required to develop workable solutions for the right to be forgotten (Ambrose, 2013; Bennett, 2012). While information passes through natural life cycles and matures based on the simple passage of time, the right to be forgotten intervenes in the natural digital decay resulting from a multitude of reasons such as hardware failure or software errors. Societal issues of big data retention and information preservation will continue to dominate discussions of freedom of speech in the United States and abroad. While it has been stated that the World Wide Web is not a library (Ambrose, 2013), it remains a valuable tool for citizens engaged in a complex contemporary society struggling to understand economic, social and political circumstances. For information creators, including journalists and public relations professionals, the marketplace of ideas is vital to democracy and must be held open to allow for information disclosure and robust debate. The proactive approach of "de-linking" information from the search engine makes information more difficult to find, placing a greater onus on journalists to find information in an old-economy way, digging through papers in government archives. This article invokes three constitutional law theories of the First Amendment to explain the tantamount value United States citizens place on freedom of information and explains, by virtue of dialogic communications and corresponding dialogic ethics, public relations professionals have an obligation to promote the free flow of information in democratic societies and therefore must reject the universal application of the right to be forgotten because of the censorship and obfuscation contained in the law's application.

Post-modern public relations codes must consider the practitioner's identity as an active participant in the dialogue, perhaps leaving traditional points of the ethical conscience or guardian by the way side. The individual practitioner engages in the marketplace, yet in a right to be forgotten environment, there is no longer a totality of information. Further, the notion of historical context is threatened by the memory holes, thus warping both the past, present and future of understanding. Scholars have called for a greater emphasis on the role of the public relations professional in the digital world (Vercic, Vercic, & Sriramesh, 2015) by differentiating the active public relations role from advertising or marketing. Whether considering the public relations role as advocates or facilitators of dialogue, communications professionals currently face a circumstance that imperils a fundamental belief in freedom of information, upon which the professional is constructed.

As post-modernist theoretical approaches for public relations mature, dialogic dimensions of public relations theory become more relevant through emerging technologies that facilitate communication and dialogue. Further, within the context of a dialogic ethical framework, the public relations professional may more aptly undergo study both as a public relations practitioner and as a citizen engaged in the world. Scholars and practitioners should revisit the idealized ethical codes to discern the advocacy for freedom of information. Further, future research must focus on the connection between the marketplace of ideas, dialogic communication, and the practice of public relations. Some suggest that the quest for mutual agreement in public relations practice may warp the marketplace via suppression of information (Stroker & Tusinksi, 2006), or that the marketplace is unfair based on the failure for all constituencies to have access (Pelanchar & Heath, 2006). Yet, few may argue that the marketplace itself is a location where dialogue can occur influencing society's perception of social, economic, and political events. By embracing Taylor and Kent's (2014) notion that dialogue is an orientation, public relations professionals operating in open information exchange can advance public relations theory in a post-modern world. Yet, public relations professionals must hold the free exchange open by protecting the flow of information through adherence to professional codes, but also through advocacy to reject global legal movements to delink information on search engines that simultaneously erodes the marketplace.

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