The Right to Be Forgotten in the Digital Age: Rethinking the Balance Between the Right to Be Forgotten and the Right to Remember in a Connected World
Dr. Christian Bartolf

1. A New Challenge for an Ancient Profession

Eminent academics, invited dignitaries, dear colleagues, and aspiring legal professionals,

It is both an honour and a privilege to speak before you on this auspicious occasion of the international seminar of this Law Academy.

An institution devoted to the study of law is not merely a place where statutes are interpreted, precedents are examined, and legal arguments are perfected. It is a place where society's most difficult questions are confronted; where liberty is reconciled with responsibility; where power is subjected to principle; and where justice is pursued through reason, debate, and constitutional values.

A law academy, therefore, is not simply an institution. It is a commitment: a commitment to the rule of law, to intellectual integrity, to the defence of human dignity, and to the continuous evolution of legal thought.

It is in this spirit that I speak today on a question that is becoming increasingly important in our connected world:

The Right to Be Forgotten in the Digital Age: Rethinking the Balance Between the Right to Be Forgotten and the Right to Remember in a Connected World.

Let me begin with a simple question.

Can a person ever truly begin again if the world refuses to forget who that person once was? -

Imagine a young individual who, at the age of twenty, makes a serious mistake. The individual faces the legal consequences, serves the sentence imposed by a court, reforms, acquires an education, builds a career, and becomes a responsible member of society.

Twenty years later, whenever a prospective employer, colleague, client, or neighbour searches that person's name online, the same incident appears at the top of the search results.

The sentence has been completed. The law has recognised the individual's rehabilitation. Society may have moved on. Yet the digital world continues to reproduce the past.

The question before us is not whether the past happened. It did.

The question is whether a person's entire future should remain permanently governed by one chapter of that past.

Now consider the other side.

Imagine a powerful public official who seeks to remove reports of corruption from search results. Or a company that wishes to erase records of its wrongdoing. Or an individual who seeks to suppress truthful reporting simply because it is embarrassing.

Should the law permit that?

Certainly not without careful scrutiny.

Here, then, lies the central dilemma: **the right to be forgotten protects human dignity, but the right to remember protects public knowledge, accountability, and history.**

Our challenge is not to choose one right and sacrifice the other. It is to develop a legal framework capable of respecting both.

2. The Digital Age: When Memory Becomes Permanent

For centuries, human memory was imperfect.

Documents could be misplaced. Newspapers could fade. Witnesses could forget. A person's reputation could evolve as circumstances changed.

Today, technology has fundamentally altered that relationship between time, memory, and identity.

A photograph uploaded in seconds may remain accessible for decades. A news report published years ago may reappear whenever a person's name is searched. An old allegation may circulate without its eventual correction. A youthful indiscretion may become a permanent feature of someone's digital identity.

The internet does not merely preserve information. Through search engines, automated indexing, recommendation systems, and repeated circulation, it determines how easily information can be found and how frequently it returns to public attention.

There is an important distinction here.

Information may have been publicly available when it was first published. But does that mean it must remain equally prominent, searchable, and consequential forever?

Public availability and permanent prominence are not necessarily the same thing.

An old newspaper report buried in a physical archive may be difficult to locate. The same report, indexed against a person's name and displayed prominently on a search engine, may influence thousands of decisions about that person.

Technology has therefore transformed the consequences of remembering.

The problem is not simply that information survives. It is that information can survive without context, without proportion, and without an opportunity for the individual concerned to demonstrate change.

In the digital age, the past does not always remain in the past. It can become an ever-present judgment upon the individual.

This raises a fundamental legal question: should the law recognise a person's interest in controlling the continuing circulation of personal information, particularly when that information has become inaccurate, irrelevant, excessive, or disproportionately harmful?

The right to be forgotten emerges from this question.

3. Understanding the Right to Be Forgotten

The right to be forgotten is often described as the right of an individual to have certain personal information removed from digital platforms or to have links to that information removed from search results, subject to applicable legal conditions and competing rights.

However, we must make an important distinction.

The right to be forgotten is not an unrestricted right to erase history. Nor does it guarantee that every uncomfortable fact about a person's life can be deleted from the internet.

In European Union law, the idea is closely associated with the right to erasure under Article 17 of the General Data Protection Regulation, commonly known as the GDPR.

That provision identifies circumstances in which personal data may have to be erased, including where the data are no longer necessary for their original purposes, consent is withdrawn in applicable circumstances, or processing is unlawful. It also establishes important exceptions, including those concerning freedom of expression and information, legal obligations, public-interest functions, and certain research and archival purposes.

The right is therefore qualified, not absolute.

Its legal foundations are closely connected to privacy, personal autonomy, dignity, reputation, and the protection of personal data.

These principles recognise that an individual is more than a collection of digital records.

A human being is capable of growth. Circumstances change. Mistakes can be acknowledged. Penalties can be served. Allegations can be disproved. Personal identities evolve.

A legal system that protects human dignity must take seriously the possibility that information, which was once relevant may, with the passage of time, become less relevant to the legitimate interests of the public.

But we must also ask: who determines when information has become irrelevant? Who decides whether the public interest has diminished? And how do we prevent the language of privacy from becoming an instrument of censorship?

These are not merely technical questions for data protection specialists. They are questions at the heart of constitutional democracy.

4. A Landmark in the Development of the Right

One of the most significant judicial developments in this field was the decision of the Court of Justice of the European Union in *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos and Mario Costeja González*, decided in 2014.

The case concerned a Spanish individual who objected to search results linking his name to an old newspaper notice concerning the recovery of social security debts through a property auction.

Although the original publication had been lawful, the individual argued that the information was no longer relevant in the same way and that its continued prominence in search results caused him harm.

The Court recognised that, under the data protection law then applicable, an individual could, in appropriate circumstances, seek the removal of links from search results generated by a search for that person's name.

Importantly, this did not necessarily mean that the original newspaper article had to be deleted.

The distinction is crucial.

The information could remain in the newspaper's archive while links to it were removed from results generated by a search for the individual's name, subject to the applicable balancing of interests.

The judgment recognised that the processing of personal information by a search engine can have consequences distinct from the original publication of that information.

In other words, the law began to recognise that the architecture of digital access matters.

A search engine does not simply reproduce information. It organises visibility.

And visibility, in the digital age, can shape reputation, opportunity, and social standing.

Yet the Court also acknowledged that the individual's rights are not automatically decisive. The public may have a legitimate interest in accessing information, particularly where the individual plays a role in public life or where the information remains relevant to public debate.

The decision therefore established an important principle: **the legality of remembering must be assessed in light of the rights and interests involved, not merely the fact that information was once published lawfully.**

The later incorporation of the right to erasure into Article 17 of the GDPR gave the debate a more explicit statutory framework within the European Union.

This development has also influenced wider international discussions about privacy, freedom of expression, and the responsibilities of digital intermediaries.

5. The Right to Remember: Why Forgetting Cannot Be Absolute

Distinguished guests,

A legal discussion becomes incomplete if it considers only the person seeking relief and ignores the people who need access to information.

The right to remember is not always expressed as a single, independent legal right. In this context, it refers to the interests protected by freedom of expression, freedom of information, journalism, historical inquiry, public accountability, and the public's ability to access truthful and relevant information.

These interests are indispensable to democracy.

Consider a journalist investigating corruption by a senior public official. Suppose that official seeks to remove truthful reports of earlier misconduct by arguing that the reports damage personal reputation.

If the request succeeds merely because the information is old or embarrassing, the public may lose access to information essential for evaluating the conduct of a person exercising public power.

Consider, similarly, a historian studying political repression, a researcher examining patterns of discrimination, or a citizen investigating the record of a public institution.

Digital archives may preserve evidence that would otherwise be lost. They can reveal patterns of abuse, establish historical facts, and enable future generations to understand the decisions that shaped their society.

To erase such material indiscriminately would risk damaging the public record.

There is also a danger that powerful individuals may use privacy claims strategically to conceal misconduct, avoid scrutiny, or rewrite their own histories.

The right to be forgotten must not become a right for the powerful to escape accountability.

Nor should it become a mechanism by which truthful reporting is removed simply because it is uncomfortable.

The right to remember is important because democratic society cannot function effectively if public knowledge is controlled entirely by the preferences of those whom that knowledge concerns.

Yet the opposite extreme is equally troubling.

If every fact, allegation, photograph, and personal detail must remain permanently accessible merely because it once entered the public domain, privacy becomes fragile and rehabilitation becomes difficult.

The objective, therefore, must be neither universal forgetting nor universal remembering.

It must be a principled balance.

6. The Legal and Constitutional Balance

How, then, should the law strike that balance?

I would suggest that at least five considerations deserve particular attention.

First, accuracy.

Is the information true? Has it been corrected? Was an allegation later disproved? Does the material create a misleading impression because an important outcome or development is omitted?

The continued circulation of false or materially misleading information presents a different problem from the preservation of accurate historical records.

The law should take seriously the harm caused when outdated information is presented as though it were a complete and current account of a person's life.

Second, relevance and the passage of time.

Information that was relevant ten or twenty years ago may no longer serve the same public purpose today.

Time alone should not determine the outcome. Some historical facts remain important indefinitely. Nevertheless, the passage of time may change the weight of the competing interests.

An old report concerning a private individual who has completed a sentence and demonstrated rehabilitation may raise different considerations from a report concerning a public official seeking re-election.

The question is not simply how old the information is, but whether its continuing accessibility remains justified.

Third, the public interest.

Does the information concern public office, professional responsibility, public safety, corruption, or another matter of legitimate public concern?

Is the person a public figure, or is the person a private individual with little connection to public affairs?

Public figures cannot reasonably expect the same degree of protection against scrutiny of matters relevant to their public responsibilities as private individuals may expect in relation to intimate or irrelevant personal details.

However, public status does not eliminate privacy altogether. The relevance of the particular information must still be examined.

Fourth, proportionality.

Is complete deletion necessary? Could a less restrictive remedy address the harm?

Perhaps a correction would be sufficient. Perhaps the original report could be updated to include the final outcome of proceedings. Perhaps an old link could be delisted from searches based on a person's name without destroying the original archival record.

The remedy should be proportionate to the problem.

Fifth, procedural fairness.

Decisions about digital information should not be left entirely to arbitrary discretion.

There must be transparent criteria, reasoned decisions where appropriate, and meaningful opportunities to challenge refusals or removals.

Search engines and online platforms may be the first bodies to receive such requests, but decisions affecting fundamental rights should be capable of effective review by competent independent authorities and, where appropriate, courts.

These five considerations—accuracy, relevance, public interest, proportionality, and procedural fairness—offer a practical framework for resolving competing claims.

They do not eliminate difficult cases. They help us decide them through legal reasoning rather than through technological convenience or the unchecked preferences of either the individual or the platform.

7. A Connected World Requires a Global Perspective

There is another difficulty that deserves our attention.

The internet does not respect national boundaries in the way traditional legal systems are organised.

A news report may be published in one country, hosted on a server in another, indexed by a search engine operating globally, and accessed by a person on the other side of the world.

Which country's law should govern a request to remove information?

Should an order made by one country's court determine what people in every other country can access?

These questions expose the limits of purely territorial solutions.

In *Google LLC v. Commission nationale de l'informatique et des libertés*, decided in 2019, the Court of Justice of the European Union considered the territorial scope of search-result delisting under European data protection law.

The Court held that EU law did not, in itself, require search engines to delist results on all versions of their search engine worldwide. It nevertheless required effective delisting across

the versions relevant to the EU framework, together with measures capable of preventing or seriously discouraging users within the EU from accessing the relevant links through search engines.

The judgment illustrates the difficulty of reconciling different national approaches to privacy and freedom of expression.

One jurisdiction may give greater weight to personal dignity and data protection. Another may place greater emphasis on freedom of speech and access to information.

Neither the technological reach of a platform nor the territorial reach of a legal remedy should be treated as a question without constitutional consequences.

For law academies, this is an especially important field of study. The right to be forgotten invites comparative legal research, international dialogue, and renewed thinking about jurisdiction, digital sovereignty, and the protection of fundamental rights.

Our legal institutions must prepare future lawyers to reason across legal systems, not merely within them.

8. Artificial Intelligence: The Next Frontier of Digital Memory

The debate is becoming even more complex with the rapid development of artificial intelligence.

Today, personal information may exist not only in newspaper archives, social media posts, and search results, but also in large datasets used to develop or operate AI systems.

An individual may seek the removal of information from an online source and discover that the information has already been copied, summarised, incorporated into datasets, or used in ways that are difficult to identify.

An AI system may reproduce outdated personal information, generate misleading statements about an individual, or reinforce a historical association that no longer reflects the person's circumstances.

This raises a further question: if personal information is erased from its original source, what obligations arise when the information has already been incorporated into other systems?

The answer will depend on the applicable law, the nature of the processing, and the circumstances of the particular case. The right to erasure does not automatically require every AI model to be retrained or every derivative record to be eliminated.

Nevertheless, the legal challenge is clear.

Data protection law must be capable of addressing not only the initial collection of information, but also its subsequent use, reproduction, and influence.

We must also be careful not to treat technological capability as a substitute for legal justification.

The fact that information can be retained, analysed, or reproduced does not, by itself, establish that doing so is lawful or ethically defensible.

The task for the legal profession is to ensure that innovation remains compatible with human dignity, accountability, and fundamental rights.

A connected world needs a legal system that understands not only where information is stored, but also how it is used to shape people's lives.

9. The Role of a Law Academy

Ladies and gentlemen,

This brings me to the institution whose international seminar we are celebrating today.

What should be the role of a law academy in confronting these challenges?

I believe it must be threefold.

First, a law academy must cultivate **legal understanding**. Our students must understand constitutional rights, data protection, freedom of expression, technological regulation, and comparative jurisprudence. They must learn to examine the reasoning behind judgments rather than merely memorise their conclusions.

Second, it must cultivate **ethical judgment**. The lawyer of the digital age must appreciate that legality and justice are related but not always identical questions. Legal knowledge must be accompanied by intellectual honesty, professional responsibility, and sensitivity to the consequences of legal decisions.

Third, it must cultivate **institutional courage**. Lawyers must be prepared to question unjust practices, defend unpopular rights, challenge arbitrary power, and protect the public interest—even when doing so is difficult.

The right to be forgotten is an ideal subject through which to develop these qualities.

It requires us to understand the individual without ignoring society, to protect privacy without silencing journalism, to preserve history without denying rehabilitation, and to encourage technological progress without surrendering human judgment.

It teaches us that legal problems rarely arrive neatly divided into competing categories of right and wrong. More often, they require the careful reconciliation of legitimate but conflicting interests.

A law academy must be a place where that reconciliation is studied rigorously, debated freely, and pursued with integrity.

It must prepare lawyers not merely to practise the law as it exists today, but also to help shape the law that tomorrow's society will need.

10. Conclusion: The Law Must Remember the Human Being

As I conclude, permit me to return to the question with which I began.

Can a person truly begin again if the world refuses to forget who that person once was?

My answer is that a just society must preserve the possibility of a new beginning.

But that possibility cannot be secured by erasing every inconvenient fact. Nor can justice be served by preserving every detail of every person's life indefinitely, without regard to relevance, context, or consequence.

We need a legal order that remembers responsibly.

A society without memory risks repeating its mistakes. A society incapable of forgetting risks imprisoning its people within theirs.

History must be preserved, but human dignity must also be protected. Public accountability must be maintained, but rehabilitation must remain possible. Freedom of expression must be defended, but it must not become an excuse for the permanent and disproportionate exposure of private life.

The right to be forgotten and the right to remember should therefore not be understood as enemies. Properly balanced, they are expressions of a shared commitment to justice: one protects the individual's capacity to move forward, while the other protects society's capacity to learn from the past.

The challenge before the law is to determine when remembering serves justice, when continued exposure causes disproportionate harm, and when the public interest requires the preservation of information.

That task demands sound legislation, principled judicial interpretation, responsible technological governance, and an informed legal profession.

And that is why institutions such as this Law Academy matter.

May this academy become a place where difficult questions are welcomed, constitutional values are strengthened, legal scholarship flourishes, and future generations of lawyers learn to approach technological change with both intellectual courage and moral responsibility.

May it produce professionals who understand that law is not simply an instrument for regulating society, but a means of protecting the dignity of the human person within it.

Let us remember the past, learn from it, and preserve it where justice requires.

But let us also recognise that no human being should be reduced forever to a single event, a single allegation, a single mistake, or a single moment in time.

For the ultimate purpose of justice is not merely to preserve what has happened. It is also to ensure that the future remains open to what is possible.

In a world that remembers almost everything, the true test of the law may be whether it can: - remember without persecuting, - protect without censoring, - and preserve history without denying humanity the possibility of renewal.

With these thoughts, I extend my warmest wishes for the success of this Law Academy and for its enduring contribution to legal education, constitutional governance, and the advancement of justice.

Thank you.

1. Regulation (EU) 2016/679 (General Data Protection Regulation), Article 17 — the right to erasure and its exceptions.
2. Google Spain SL and Google Inc. v. AEPD and Mario Costeja González, Case C-131/12, Court of Justice of the European Union, 13 May 2014 — the landmark decision on delisting search results.

   https://curia.europa.eu/juris/liste.jsf?num=C-131/12

3. Google LLC v. CNIL, Case C-507/17, Court of Justice of the European Union, 24 September 2019 — the territorial scope of search-result delisting.

   https://curia.europa.eu/juris/liste.jsf?num=C-507/17

4. European Convention on Human Rights, Articles 8 and 10 — the rights to respect for private life and to freedom of expression.
5. George Brock, The Right to Be Forgotten: Privacy and the Media in the Digital Age (2016) — a useful study of the implications for privacy, journalism, and public information.

   https://reutersinstitute.politics.ox.ac.uk/our-research/right-be-forgotten-privacy-and-media-digital-age

   https://ora.ox.ac.uk/objects/uuid%3A5259ab76-0061-499f-ad0f-082dd9005f61

6. Federico Fabbrini and Edoardo Celeste, “The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders,” German Law Journal (2020) — a comparative analysis of cross-border legal challenges.

   https://www.cambridge.org/core/journals/german-law-journal/article/right-to-be-forgotten-in-the-digital-age-the-challenges-of-data-protection-beyond-borders/3E3E182352F1AD555CBB788E2380E23F

GDPR stands for the General Data Protection Regulation. It is a comprehensive data privacy law enacted and enforced by the European Union (EU): https://gdpr.eu/what-is-gdpr/

Key Details

- Effective Date: May 25, 2018 (replacing the 1995 Data Protection Directive).
- Core Purpose: To protect the personal data and privacy of individuals within the EU and the European Economic Area (EEA), while simplifying rules for international business.
- Global Reach: It applies not only to organizations based in the EU, but to any company worldwide that processes the personal data of EU residents or offers them goods and services.

Individual Rights Under GDPR

- Right to Access: You can request a copy of the personal data a company holds about you.
- Right to Rectification: You can ask to correct inaccurate or incomplete data.
- Right to Erasure ("Right to be Forgotten"): You can request that your personal data be deleted under certain conditions.
- Right to Data Portability: You can transfer your data from one service provider to another.
- Right to Object/Consent: You have the right to withdraw consent or object to how your data is processed.

Business Obligations and Penalties

- Transparency & Security: Companies must use lawful bases for processing, practice data minimization, and implement strong security measures.
- Breach Notification: Organizations must report serious data breaches to authorities and affected users (often within 72 hours).

The Court of Justice of the European Union is the judicial institution of the European Union. It is an institution that comprises two courts – the Court of Justice and the General Court. The Court enforces and interprets EU law. It ensures that the EU's institutions and Member States respect this law. The Court provides a single interpretation of EU law so that it is applied in the same way throughout the EU.

https://curia.europa.eu/site/jcms/