The Right to be Forgotten and digital collections: Surveying practice and policy at ARL member institutions

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The Right to be Forgotten and digital collections: Surveying practice and policy at ARL member institutions

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Being Forgotten throughout History

• Richard Brown (1997)
  • In 15th and 16th century Italy, under the Duke of Ferrera, newly-released prisoners were given the opportunity, on the occasion of three significant annual festivals, to destroy records of past offences.

• Samuel Warren and Louis Brandeis (1890)
  • Published “The Right to Privacy” in the *Harvard Law Review*
    • Articulated and encouraged the concept of the ‘right to be let alone’, as a right of an individual to enjoy life through the desire of privacy in an increasingly more documented and public world.
Subtitle: The Virtue of Forgetting in the Digital Age

The notion of the ability for one to forget in order to begin anew has been crucial throughout human history.

Calls for an equivalent to forgetting to take place in the world of “infallible machines” and “constant accessibility to information”

“Expiration dates” for information
The Age of Google

• May 2014 – Mario Costeja González – European Court of Justice ruled against Google
  • 1998 article in La Vanguardia
  • Called even more attention to his case
    • Streisand Effect
  • Google developed a methodology, but only for the EU

• Dec 2009 – Kevin Vanginderen – US Federal Judge dismissed appeal
  • 1983 article in Cornell Chronicle
  • Case was dismissed because “university did not defame the Plaintiff because the information was accurate”
Latest Headlines

• The Paris Lawyer Who Gives Google Nightmares
  • https://www.npr.org/sections/alltechconsidered/2018/04/04/598888803/the-paris-lawyer-who-gives-google-nightmares
    • He advised on NY RTBF bill - Assembly Bill A5323

• Canada – Calls for More Legal Remedies for Harmful Personal Information
  • http://thechronicleherald.ca/canada/1559004-privacy-commissioner-calls-for-more-legal-remedies-to-harmful-personal-information

• Businessman Wins in the UK
  • https://www.theguardian.com/technology/2018/apr/13/google-loses-right-to-be-forgotten-case

• The Savory Tort – Italian Court Case
  • Pop star Antonello Venditti sued RAI Play
  • http://www.thesavorytort.com/2018/04/popular-singers-right-to-be-forgotten.html?m=1
Literature Review

- Law
- Communications Studies
- Information Technology
- Archival Studies
What are libraries doing about this?

- Do libraries get take-down requests?
- If so, how do we react?
- What are our policies?
- Are we consistent?
- Do we need a set of guidelines as a profession other than what we already have?
- Our survey focuses on requests made directly to the institution publishing the digital content, and not the search engine.
Results

• 124 ARL member institutions were surveyed
• 25.8% response rate
• Survey divided roughly between demographical questions & hypothetical scenarios
• Article on full results of survey currently available on CR&L preprint (To be published Jan 2019)
Approximately how long have your digital collections been online?
Types of digital items

- Images
- Text
- Newspaper
- Audio
- Video
- Data sets
- Other
Digital Platform(s)

- Fedora/Hydra: 29.58%
- DSpace: 14.08%
- ContentDM: 22.54%
- Digital Commons: 14.08%
- Omeka: 7.04%

Other/Locally designed solution (Please specify details, if available) or Don't know/Unsure
Takedown requests + Policy

Presence of policy

• 11 indicated some kind of policy to address takedown requests *
• 9 indicated a draft in the works

“Yes, we have a commitment to academic freedom- we will take down content that violates copyright, but won’t with a knee jerk reaction take down content that someone finds offensive.”
Staffing

• Requests the number of FT and PT positions, and titles
  • 93% have at least 2 FT positions in place
  • Varying titles and responsibilities
Hypothetical questions (Q1)

You receive a request for a name to be removed from a particular item in your digital library, directly from the individual in question. The requester claims that the inclusion of their name in an openly accessible digital library violates their privacy.

The name appears in print in your digital regional newspaper collection, within the student newspaper that was published in print at your institution and later digitized for the digital collection. This content has been run through optical character recognition (OCR) software, and has been fully indexed by search engines such as Google. How would you respond?
Some selected answers

• “I would check with our [General Counsel], but would assume that no change would be required- we are merely providing access to an already existing item and would not want to modify the historical record.”

• “We would redact the name somehow if the person felt strongly about it.”

• “We would maintain the digital representation of the newspaper while removing the name from the OCR text file to prevent crawlers from indexing the name and making it easily discovered.”
• “We would discuss their reasons and explain it’s a news source and we can’t change it. It would be unethical to alter news from the past. If they claim the article is defamatory, we would refer them to University Council.”

• “Don’t waste my time- Find yourself a lawyer and schedule an appointment with them to talk about your privacy.”
Real-life scenarios

• One institution reported that copyright ownership & cultural sensitivity were the two major decision points.
• Another institution redacted Social Security numbers, after the content had been published
• Removal an oral history file
Take-aways/Discussion

- Lack of consistency in practice
- Lack of understanding of the nature of takedown requests and copyright
- Many institutions lack a policy or guiding principles to assist with decision making
- Long-term effect of varying practice on openly accessible digital collections
  - (And are they really openly accessible digital collections anymore??)
Complexities, Conundrums and other Pickles

• Can there be exceptions?
  • Request from family member regarding violent crime involving an alum
• A call for a higher level of transparency in final decision making & display of policy
Tales from Kent State…

• Daily Kent Stater edits-Threat to sue redux & inspiration for survey
• Creation of a task force to define procedures and ‘Modifications to Digital Content’
• Process now in place to address requests for removal of information in student newspaper:
  1. Make a public records request regarding their concern
  2. Submit documentation as proof of an inaccuracy to the Office of Student Media, who will make the decision about redaction or correction
  3. Office of Student Media will communicate the final decision to University Libraries, who will in turn make any corrections
Thank you!

Questions/Comments?

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