

PRESERVING PERSONAL DIGNITY: THE VITAL ROLE OF THE RIGHT TO BE FORGOTTEN

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Abstract: The coexistence of the real and virtual worlds has resulted in a complex interplay between them, where the definition of the virtual world remains elusive. The rise of digital technologies and the proliferation of personal data have led to concerns about privacy, and the need to adapt the concept of privacy to the current information infrastructure. This adaptation requires a shift from the traditional focus on defending the private sphere against external invasions to a consideration of privacy issues in the context of the current organization of power. The Right to be Let Alone and the Right to be Forgotten are two legal concepts that have gained importance in this context. The former emphasizes an individual's right to total immunity from injury, while the latter enables users to control their personal data if it is no longer necessary for its original purpose or if it causes more harm than benefits. The Right to be Forgotten is crucial to protecting personal identity and privacy in the digital age, and it provides a solution for issues related to data use and artificial intelligence. Thus, a comprehensive understanding of the Right to be Forgotten is essential to ensure effective protection of individual rights and uphold principles of human dignity.

Keywords: real world; virtuality; privacy; right to be let alone; right to be forgotten.

INTRODUCTION

What we know as the real world, or offline, and the online world coexist and communicate with each other for a long time. When crossing body and movement with the dimension usually called “virtual”, it seems that a grouping of things that belong to different worlds is woven. Starting with the conceptualization of what the “virtual” is, a term so repeated in times of proliferation of digital technologies, whose polysemic meaning transits, without agreement, through different perspectives arising from common sense, philosophy, social sciences, and humanities.¹

The new dimensions of collecting and processing information have

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¹ Zanetti, Marcelo Callegari. *Second Life®: Corpo ou Avatar? Realidade Ou Fantasia?*. Thesis (Ph.D in Desenvolvimento Humano e Tecnologias Área de Tecnologias, Corpo e Cultura) - Universidade Estadual Paulista “Júlio de Mesquita Filho” (UNESP). Rio Claro, 2013, 15.

led to the multiplication of appeals to privacy and, at the same time, raised awareness of the impossibility of including new topics in the institutional framework traditionally identified by that concept. But, today, the problem is not that of adapting a notion born in other times and under other skies to a profoundly changed situation, respecting its reasons and logic of origin. Those who know how to decipher the current debate, in fact, realize that not only is the classic theme of the defense of the private sphere against outside invasions reflected in it, but it also makes an important qualitative change, which leads to considering privacy problems, rather in the context of the current organization of power, of which the information infrastructure is now one of the fundamental components.²

Attention should be drawn to how current society is conducive to moving from individual autonomy to direct hypothetical creation for the person. So, mainly in France, there is talk of the phenomenon of the multiplication of subjective rights, which is manifest especially in the field of personal and family law. One of these present rights is the right to privacy, including not only the right to informational self-determination, but also the well-known right to be let alone, demarcated from spheres of action free of any interference.³

The idea of the Right to be let Alone was described by Judge Thomas Cooley, in 1879, where he stated that the right to one's own person is a right of total immunity: to be left alone. The corresponding duty is not to inflict injury and not, within such proximity as would make it successful, attempt to inflict injury. In this, duty goes beyond what is required in most cases; for usually an unfulfilled purpose or an unsuccessful attempt is not noticed. But the attempt to commit aggression involves many elements of injury not always present in breaches of duty; it usually involves an insult, a putting of fear, a sudden call to the energies for immediate and effective resistance. Very likely there is a shock to the nerves, and the individual's peace and tranquility is disturbed for a period of greater or lesser duration.⁴

An idea that Warren and Brandeis, in 1890, brought to civil law with the concern of invasion of privacy. They asserted that the right of one who remained a private person to prevent his public portrayal presents the simplest case for such an extension; the right to protect oneself from pen portraits, from press discussion of one's private affairs, would be more important and far-reaching. If casual and unimportant statements in a letter, if they are

² Rodotà, Stefano. *Tecnologie e diritti*. Edição do Kindle. Bolonha: Società editrice il Mulino, 2021, 23-24.

³ Barbosa, Mafalda Miranda, and Tomás Prieto Álvarez. *O Direito ao Livre Desenvolvimento da Personalidade: Sentidos e Limites*. Coimbra: Gestlegal, 2020, 10-11.

⁴ Cooley, Thomas M. *A treatise on the Law of Torts, or, The wrongs which arise independent of contract*. 2^a Edition, Chicago: Callaghan and Company, 1879, 24.

handiwork, however inartistic and worthless, if goods of all kinds are protected not only against reproduction, but also against description and enumeration, how much more should act and A man's sayings in his social life and domestic relations must be protected from relentless publicity. If you cannot reproduce a woman's face photographically without her consent, how much less should the reproduction of her face, her form and actions be tolerated by graphic descriptions colored to suit a gross and depraved imagination.⁵

This right to be forgotten is broad and comprehensive and allows the user to control his personal data if it is no longer necessary for its original purpose, or if, for some other reason, he wishes to withdraw his consent to its processing, among others, if there was data would be considered an abusive practice, as it causes more harm to individuals, to the data holder, than benefits to society and the collective interest, opposing in the legal balance the personal rights of data holders on the one hand and freedom of expression and rights collectives of another. Understanding the application of this right in particular cases, it is an indispensable right and when the individual cannot exercise it, it can imply a serious setback against the principles of human dignity and very personal rights, in particular privacy and personal identity, which define the essence of each one.⁶

Therefore, having a broad understanding of the Right to be Forgotten is important for the internet user to have a more effective protection of individual rights, making issues such as data use and artificial intelligence more understandable and clear to all and ensuring that those have fully aware of how your data is collected and treated and exposed on the internet the possible solution, the right to be forgotten, to provide personality rights.

I. PERSONALITY RIGHTS

Law can only be conceived having human beings in coexistence as recipients. The application of civil law to this human coexistence triggers a web of legal relationships between men, relationships translated into powers and legal duties *lato sensu*.⁷

When thinking in a purely technical sense, being a person is precisely having the ability to be the subject of rights and obligations. It is to be a center

⁵ Warren, Samuel D., and Louis D. Brandeis. The Right to Privacy. *Harvard Law Review*, v. IV, n. 5, 1890, 213-214.

⁶ Safari, Beata A. Intangible Privacy Rights: How Europe's GDPR Will Set a New Global Standard for Personal Data Protection. *Seton Hall Law Review*, Volume 47, 809-848, 2017, 835.

⁷ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 98.

for attributing legal powers and duties, to be a center of a legal sphere. In this technical-legal sense, there is no coincidence between the notion of person or subject of law and the notion of human being. People in the legal sense are not necessarily human beings, where one can find certain organizations of people, such as associations and societies, and certain sets of goods, such as foundations, to which objective law attributes legal personality.⁸

The technical-legal concept of person does not necessarily coincide with that of man or human being. If law, however, aims to discipline human interests, if all law is constituted for the sake of and for the service of men, it is logically imperative that at least some men be endowed with legal personality. The attribution or recognition of the personality of at least some human beings is also a logical assumption of law. The discovery of the self, as a person, a category encompassing the inseparable soul and body, endowed with reason and perfectible, is recent, even in Western thought.⁹

At first the individual was nothing more than an element of the material world. Object subject to all the constraints of nature and, therefore, of other men. However, the self was thought of as a double face, as an object of nature and as one of those values. As an empirical being that produces, and as a moral, self-determined being, bearer of unique and supreme values and, therefore, essentially non-social. Recognizing in myself and in the other a moral value, necessarily supreme and equal, and, therefore, the essential identity of all human beings, we started to walk the path of recognition of the Person and its preservation, that is, of their rights, the rights of the person.¹⁰

The person as a space of exclusion because it is an essential assumption of his existence that others do not interfere in what he is: in his life, in his physical structure, in his mind, in his creative capacity, among others. The root of the rights of the person, whether public or private, is embedded in Christianity, as it determines the desecration of the nature of society, freeing man from being an object to transform him into a subject, bearer of values.¹¹

The quest for autonomous individuality was alien to Eastern and classical Greek culture, and such an idea was typical of the Christian religion, where subjectivity first appeared, along with the infinity of self-consciousness. The person owes to Christianity its metaphysical base that guarantees the passage from the notion of the person as a member of society

⁸ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 98.

⁹ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 98-99.

¹⁰ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 10.

¹¹ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 11-12.

clothed in a social state to the notion of the non-social human person, in a radical way.¹²

The question of the human person only arose with Christianity, where it was placed at the center of concerns at a philosophical, ethical, legal, and social level. If Christians were not the creators of the Latin *persona* or the Greek *hypostasis*, it was they who attributed content to it and drew consequences from that thought.¹³

Until Christianity, people were only exceptional beings who played the first roles in society and since Christianity, any human being has become a person, whether man, woman, child, unborn child, slave, foreigner, enemy, among others, through the ideas of brotherly love and equality before God.¹⁴

The traditional conception of the beginning of personality is dominated by the Aristotelian conception of the vegetative or nutritive soul, the faculty of growth and reproduction; of the animal or sensitive soul, faculty of feeling, of desiring and of moving; and of the reasonable or thinking soul, faculty of humanity, is being acquired by birth.¹⁵

Since human society is the presupposition of all law, the law being a social rule, logically only man is susceptible to rights and obligations, a quality that cannot be conferred on irrational beings. It was even useless to attribute to them any street rights and obligations for the simple reason that they could never exercise them.¹⁶

Personality or legal capacity is the precondition or presupposition of all rights; and, therefore, it is found even in newborns or in any other entity to which the law recognizes it; but there is a capacity to act, which presupposes legal capacity, being a different situation. Personality is diverse legal man. The personality is the legal man in a static state; the ability is the legal man in the dynamic state. In other words: to be a person, it is enough that the man needs to have the necessary requirements to act for himself, as an active or passive subject of a legal relationship.¹⁷

In 1879, for Judge Thomas Cooley, the personal right was considered the main class covering the rights that belong to the person. In it are included

¹² Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 12.

¹³ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 14.

¹⁴ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 14.

¹⁵ Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020, 41.

¹⁶ Gonçalves. Luiz da Cunha. *Tratado de Direito Civil: em comentário ao Código Civil Português*. Volume 1. Coimbra: Coimbra Editora, 1929, 168.

¹⁷ Gonçalves. Luiz da Cunha. *Tratado de Direito Civil: em comentário ao Código Civil Português*. Volume 1. Coimbra: Coimbra Editora, 1929, 169.

the right to life, the right to immunity from attack and injury, and the right, equally with others, in a similar way, to control one's action. In all enlightened countries the same class would also include the entitlement to the benefit of every reputation that the earldom bestowed on him and the enjoyment of all civil rights granted by law. Political rights can also be included under the same head.

Snapshots and journalistic endeavors invaded the hallowed precincts of private and domestic life; and numerous mechanical devices threaten to fulfill the prediction that "what is whispered in the closet will be proclaimed from the housetops." It has been felt for years that the law must provide some remedy for the unauthorized circulation of portraits of private persons; and the evil of invasion of privacy by newspapers has long been felt, only recently discussed by a competent writer.¹⁸

Of the desirability—indeed the necessity—of such protection, it is believed, there can be no doubt. The press is pushing in all directions the obvious limits of decorum and decency. Gossip is no longer the resort of the idle and the vicious, but has become a trade, which is practiced with diligence and shamelessness. To satisfy a lustful taste, the details of sexual intercourse are published in the columns of daily newspapers. To occupy the indolent, column after column is filled with idle gossip, which can only be obtained by intrusion into the domestic circle.¹⁹

The intensity and complexity of life, resulting from the advance of civilization, made some withdrawal from the world necessary, and man, under the refining influence of culture, became more sensitive to publicity, so that solitude and privacy became if more essential to the individual; but modern enterprise and invention, through intrusions upon his privacy, have subjected him to mental pains and anguish far greater than could be inflicted by mere bodily injury. Nor is the damage caused by such invasions limited to the suffering of those who may be the objects of journalistic or other endeavors. In this, as in other branches of commerce, supply creates demand. Every crop of unseemly gossip thus harvested becomes the seed of more, and, in direct proportion to its circulation, results in a lowering of social standards and morality.²⁰

Even seemingly harmless gossip, when widely and persistently circulated, is potent for evil. He both belittles and perverts. It diminishes by reversing the relative importance of things, thus diminishing the thoughts and

¹⁸ Warren, Samuel D., and Louis D. Brandeis. The Right to Privacy. *Harvard Law Review*, v. IV, n. 5, 1890, 195.

¹⁹ Warren, Samuel D., and Louis D. Brandeis. The Right to Privacy. *Harvard Law Review*, v. IV, n. 5, 1890, 196.

²⁰ Warren, Samuel D., and Louis D. Brandeis. The Right to Privacy. *Harvard Law Review*, v. IV, n. 5, 1890, 196.

aspirations of a people. When personal gossip attains the dignity of print and crowds the available space for subjects of real interest to the community, it is no wonder that the ignorant and the unwise confuse their relative importance. Easily understood, appealing to that weak side of human nature which is never quite broken by the misfortunes and frailties of our neighbors, no one can be surprised that it usurps the place of interest in brains capable of other things. Triviality destroys both robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its destructive influence.²¹

For Bauman, nowadays, what scares us is not so much the possibility of betrayal or violation of privacy, but the opposite, the closing of exits. The area of privacy becomes a place of imprisonment, with the owner of the private space condemned and sentenced to suffer atoning for his own mistakes; forced into a condition marked by the absence of listeners eager to extract and remove the secrets that hide behind the trenches of privacy, to display them publicly and make them common property of all, that all want to share.²²

For Rodotà it has been said many times that technology puts each of us in the condition of finding a virtual place in which to satisfy our own interests. But this process of selection of interests would lead to greater social fragmentation, not to the strengthening of the sense of community. The available data, in any case, clearly show that virtual communities now also offer the possibility of establishing particularly intense social connections, or even present themselves as the only way to be part of a social formation for that subject who, otherwise, he would be doomed to isolation.²³

All of this means that our behavior has become a commodity, a tiny piece of a marketplace that serves as a platform for personalizing the entire internet.²⁴ Ultimately, the filter bubble can affect our ability to decide how we want to live. To be the authors of our own life we have to be aware of the wide range of options and lifestyles available. When we enter a filter bubble, we allow the companies that developed it to choose the options that we will be aware of. Perhaps we think we are the masters of our own destiny, but personalization can lead us to a kind of informational determinism, in which what we click on in the past determines what we see next – a virtual history that we are doomed to repeat. And with that, we are trapped in a static, ever-

²¹ Warren, Samuel D., and Louis D. Brandeis. *The Right to Privacy*. *Harvard Law Review*, v. IV, n. 5, 1890, 196.

²² Bauman, Zygmunt, and David Lyon. *Vigilância Líquida*. Rio de Janeiro: Zahar, 2013, 34.

²³ Rodotà, Stefano. *A Vida na Sociedade da Vigilância: A privacidade hoje*. Rio de Janeiro: Renovar, 2008, 116.

²⁴ Pariser, Eli. *O Filtro Invisível – O que a internet está escondendo de você*. Tradução por Diego Alfaro. Editora Zahar. Kindle Version. Digital Edition, 2012, 646-647.

narrowing version of who we are – an endless repetition of ourselves.²⁵

II. THE VITAL ROLE OF THE RIGHT TO BE FORGOTTEN

The Internet, nowadays, is a complex network, similar to a spider's web, in which two points are connected by thousands of potential paths. If a message cannot take the shortest and simplest path between sender and receiver, it can be rerouted along any other available path. The distance between the points can be long, but because electronic signals travel so fast, the time difference is negligible. Thus, an e-mail message can travel around the world and reach a computer less than a kilometer away.²⁶

Globally, is increasingly used and fed with an excessive amount of information, especially of a personal nature, making it possible for nothing to be forgotten. In the past, anyone wishing to remain anonymous only needed to prevent their name and telephone number from appearing in telephone directories, commonly known as the “yellow pages”. However, currently, even taking all measures to preserve privacy, it is practically difficult to maintain it. Information that before could take months or even years to be acquired, can now be consulted with ease, being available to internet users.²⁷

Viktor Mayer-Schönberger states that while we are constantly forgetting and reconstructing elements of our past, most Internet users continue to access digital memories and facts that have not been reconstructed. Thus, as the past we remember changes and evolves, the past captured in digital memory is constant and remains frozen in time. These two views are likely to clash, namely the frozen memory that others have about us and the evolving, emerging memory that we carry in our minds. None of them is an accurate and complete representation of who we are. The former is locked in time, while the latter, our mind's interpretation of the past, is heavily influenced by who we are in the present.²⁸

Mayer-Schönberger also states that new technologies make the act of forgetting, which used to be a rule, an exception. That's why we need mechanisms, both legal and technological, to find the balance. It is not just a question of forgiving questionable attitudes, but of assuming that common actions, such as taking pictures or engaging in private conversations, if perhaps taken out of context, cannot be criteria for defining someone's

²⁵ Pariser, Eli. *O Filtro Invisível – O que a internet está escondendo de você*. Tradução por Diego Alfaro. Editora Zahar. Kindle Version. Digital Edition, 2012, 250-255.

²⁶ Eoyang, Mieke. Beyond Privacy and Security: The Role of the Telecommunications Industry in Electronic Surveillance. *Journal of National Security Law & Policy*, 2017, 263.

²⁷ Souza, Bernardo de Azevedo e. *Direito, Tecnologia e Práticas Punitivas*. Kindle Edition, Porto Alegre: Canal Ciências Criminais, 2016, 488-489.

²⁸ Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Edition: Revised ed. for Kindle, Princeton: Princeton University Press, 2011, 106-107.

character or competence. The referred author argues that people have total control over their digital footprints: photographs could have an expiration date and be deleted after a certain time.²⁹

New devices, systems, software, while bringing benefits to society, also bring risk. The sale of an eternal memory of unforgettable moments, of travel, of family moments, with the advancement in the quality of photos and videos and the great sharing of information, from the photo of the coffee at the airport, of the food in the well-regarded restaurant, or even a laugh in a park, leave eternal traces that can bring risk in the future for everyone who uses technology in their daily lives.³⁰

Remembering is a two-step process. The first is successfully committing information to long-term storage. The second is to retrieve this information from memory. But neuroscientists and psychologists are still debating what it means to “forget” information stored in long-term memory. Information in long-term memory cannot be erased except by physiological damage. They suggest that when we forget what we lose is not the information itself but the link to it. It's like a web page that no other page links to. Without links pointing to it, the information cannot be found, not even through a stupendous search. For all practical purposes, it's forgotten.³¹

Sometimes we forget the past and sometimes we distort it; some disturbing memories haunt us for years. However, we also rely on memory to perform a surprising variety of tasks in our everyday lives. Recalling conversations with friends or family vacations, remembering appointments and errands we need to run, evoking words that allow us to speak and understand others, remembering foods we like and dislike, acquiring the knowledge necessary for a new employment — everything depends, one way or another, on memory. Memory plays such a pervasive role in our daily lives that we often take it for granted until an incident of forgetting or distortion demands our attention.³²

Communication, therefore, already goes beyond the traditional means of mass communication—newspapers, radio, and “generalist” television. The combination of television, computer and telephone is the common

²⁹ Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Edition: Revised ed. for Kindle, Princeton: Princeton University Press, 2011, 2.

³⁰ Guimarães, João Alexandre Silva Alves. O Direito ao Esquecimento como Ferramenta de Defesa nas Novas Tecnologias. In: *Tutela Jurídica do Corpo Eletrônico: novos desafios ao direito digital*, edited by Cristiano Colombo, Wilson Engelmann, and José Luiz de Moura Faleiros Júnior. Indaiatuba: Editora Foco, 2022, 101.

³¹ Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Edition: Revised ed. for Kindle, Princeton: Princeton University Press, 2011, 18-19.

³² Schacter, Daniel L.. *The Seven Sins of Memory: How the Mind Forgets and Remembers*. Update Edicion, Edição do Kindle, Boston/New York: Houghton Mifflin Harcourt, 2021, 11.

denominator of new media. The fundamental difference between the old and new media lies in digitization and interactivity, rather than the passivity that characterized the situation of the newspaper reader, radio listener and television viewer. It is true that certain relatively rudimentary forms of interactivity were achieved by associating the telephone with radio and television, thus allowing the intervention of listeners and viewers in the execution of programs. But only the advent of new media offers real possibilities for dialogue and independent intervention by an interested public.³³

New media are finally broadening the horizon. We can overcome programming constraints. They make it possible to combine images, sounds, documents extracted from the most diverse sources to arrive at a unique program, a kind of direct creation of its author. Thus, we are facing a possible passage from passivity to autonomy: this is evidenced by the observation of telematic networks where interactivity has a greater chance of developing. Here, in fact, personalization and autonomy facilitate continuous exchange with other individuals, the construction of new individual and collective subjectivities and the overcoming of the old distinction between producers and consumers of information. This last possibility is certainly the big news. In networks, traditional logics and hierarchies are not reproduced and it is possible to go beyond interactivity. The offer does not only expand according to a process that implies, in any case, dependence on the supplier of products and services, which thus maintains a position of superiority and maintains a model of vertical communication.³⁴

The right to privacy, for Brandeis and Warren, does not prohibit the publication of material of public or general interest. In determining the scope of this rule, aid would be granted by analogy, in the law of defamation and slander, of cases dealing with the qualified privilege of comment and criticism on matters of public and general interest. Of course, there are difficulties in applying such a rule; but they are inherent in the subject, and certainly no greater than those which exist in many other branches of the law, —for example, in that large class of cases where the reasonableness or unreasonableness of an act is brought to the test of responsibility. The design of the law should be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into unwelcome and unwelcome publicity, and to protect all persons whatever; their position

³³ Schacter, Daniel L..*The Seven Sins of Memory: How the Mind Forgets and Remembers*. Update Edicion, Edição do Kindle, Boston/New York: Houghton Mifflin Harcourt, 2021, 11.

³⁴ Schacter, Daniel L..*The Seven Sins of Memory: How the Mind Forgets and Remembers*. Update Edicion, Edição do Kindle, Boston/New York: Houghton Mifflin Harcourt, 2021, 44.

to have matters they might prefer to keep private made public against their will. It is the unwarranted invasion of individual privacy that is rebuked and, as far as possible, avoided. The distinction, however, noted in the above statement is obvious and fundamental. There are people who can reasonably claim protection against the notoriety that comes from being made victims of journalistic enterprises. There are others who, to varying degrees, have renounced the right to live their lives shielded from public observation.³⁵

In this sense, in the US, one of the first cases in which one can see traces of the right to be forgotten is *Melvin v. Reid*. In 1919, Gabrielle Darley, a prostitute, is accused and acquitted of murder. She remakes her life, abandons prostitution, marries Melvin and has children. In this new phase, people in her social circle are unaware of her past, but in 1925, Dorothy Davenport Reid produced the film *Red Kimono*, which accurately portrayed Gabrielle's past life, including identifying her with her real name.³⁶

As a result, Melvin sought redress for the violation of his wife's and family's privacy, and in 1931 the California Court of Appeals upheld the claim on the grounds that a person who lives a life of righteousness, regardless of past, has a right to happiness, which includes freedom from unnecessary attacks on his character, social position or reputation.³⁷

According to the California Court of Appeals, in its decision, the use of the appellant's real name in connection with the incidents of her previous life in the plot and in the advertisements was unnecessary, indelicate, a deliberate and arbitrary disregard of that charity which should act us in our social relations, and which should prevent us from unnecessarily holding another person up to the scorn and contempt of the righteous members of society.³⁸

For the Court, one of the main objectives of society as it is now constituted, and of the administration of our penal system, is the rehabilitation of the fallen and the reform of the criminal. According to these theories of sociology, our goal is to lift and support the unfortunate, rather than tearing them down. Where a person has rehabilitated himself by his own efforts, we

³⁵ Warren, Samuel D., and Louis D. Brandeis. *The Right to Privacy*. *Harvard Law Review*, Boston, v. IV, n. 5, 1890, 214.

³⁶ Carmona, Paulo Afonso Cavichioli, and Flávia Nunes de Carvalho Cavichioli Carmona. A aplicação do direito ao esquecimento aos agentes delitivos: uma análise acerca da ponderação entre o direito à imagem e as liberdades de expressão e de informação. *Revista Brasileira de Política Pública*, v. 7(3): 436-452, 2017, 440.

³⁷ Carmona, Paulo Afonso Cavichioli, and Flávia Nunes de Carvalho Cavichioli Carmona. A aplicação do direito ao esquecimento aos agentes delitivos: uma análise acerca da ponderação entre o direito à imagem e as liberdades de expressão e de informação. *Revista Brasileira de Política Pública*, v. 7(3): 436-452, 2017, 440.

³⁸ Court of Appeal of California, *Fourth District*. *Melvin v. Reid*, 112 Cal.App. 285, 297 P. 91 (1931), 291.

as right-thinking members of society should allow him to continue on the path of righteousness rather than throwing him back into a life of shame or crime. Even the thief on the cross was allowed to repent during the hours of his final agony.³⁹

The famous Lebach case takes its name from the village located in the Federal Republic of Germany, where in 1969 a robbery took place, which drew a lot of attention from public opinion, with wide coverage in the press and on television. The robbery became known as "the murder of soldiers from Lebach". On that occasion, four soldiers were killed and one was seriously injured due to the action of criminal agents, who subtracted weapons and ammunition from the warehouse, where these soldiers were on guard. In 1970, two defendants were sentenced to life imprisonment and another to six years in prison for having helped prepare the criminal action.⁴⁰

Aware of the repercussions of the case, the ZDF (*Zweites Deutsches Fernsehen*—second German channel) produced a documentary, which would portray the crime through dramatization by actors, and would present photos and real names of all the condemned, including the possible homosexual connections that existed between them. The documentary would be shown on a Friday night, days before the third convict leaves prison after serving his sentence. He sought an injunction to prevent the program from being shown and the State Court of Mainz and the State Court of Koblenz dismissed the request. On the other hand, the German Federal Constitutional Court (TCF) upheld the constitutional claim for envisaging a violation of the right to personality development. Thus, it prohibited the exhibition of the documentary until the final decision of the main action by the competent ordinary courts.⁴¹

For the German Federal Constitutional Court, in this case, and in accordance with its constant practices at the time of the judgment, not every sphere of private life enjoys the absolute protection of fundamental rights. If an individual, in his capacity as a citizen, living within a community, enters into relations with others, influences others by his existence or activity, and thereby interferes with other people's personal sphere or the interests of community life, his exclusive right from being master of his own private

³⁹ Court of Appeal of California, *Fourth District. Melvin v. Reid*, 112 Cal.App. 285, 297 P. 91 (1931), 292.

⁴⁰ Carmona, Paulo Afonso Cavichioli, and Flávia Nunes de Carvalho Cavichioli Carmona. A aplicação do direito ao esquecimento aos agentes delitivos: uma análise acerca da ponderação entre o direito à imagem e as liberdades de expressão e de informação. *Revista Brasileira de Política Pública*, v. 7(3): 436-452, 2017, 440.

⁴¹ Carmona, Paulo Afonso Cavichioli, and Flávia Nunes de Carvalho Cavichioli Carmona. A aplicação do direito ao esquecimento aos agentes delitivos: uma análise acerca da ponderação entre o direito à imagem e as liberdades de expressão e de informação. *Revista Brasileira de Política Pública*, v. 7(3): 436-452, 2017, 440.

sphere can become subject to restrictions, unless his most intimate sphere of life is in question. Any social involvement, if strong enough, can in particular justify measures by public authorities in the interest of the public as a whole—such as publishing photos of a suspected person in order to facilitate a criminal investigation.⁴²

For the Court, the freedom to transmit may have the effect of restricting any claims based on the personality right. However, the damage to 'personality' resulting from a public representation should not be disproportionate to the importance of the publication in upholding freedom of communication. Furthermore, it follows from these guiding principles that the balance of interests required must take into account the intensity of the violation of the personal sphere by broadcasting, on the one hand; on the other hand, the specific interest which is being felt by broadcasting and can be thus served, must be evaluated and examined as to whether and to what extent it can be satisfied even without any interference—or less far-reaching interference—with the protection of the personality.⁴³

The reflex effect of the constitutional guarantee of personality does not, however, allow the media, in addition to contemporary reporting, to deal indefinitely with the person of the criminal and his private sphere. Instead, when the interest in receiving information has been satisfied, their right to "be left alone" takes on increasing importance in principle and limits the mass media's desire and the public's desire to make the individual sphere of their life the object discussion or even entertainment. Even a culprit, who has attracted public attention for his serious crime and won widespread disapproval, remains a member of that community and retains his constitutional right to the protection of his individuality. If, on prosecution and conviction by a criminal court, the act which appeals to the public interest has met with the just community reaction required by the public interest, any further continued or repeated invasions of the culprit's personal sphere normally cannot be justified.⁴⁴

In effect, the TCF, when judging the Lebach case, highlighted that in the collision between freedom of broadcasting and the presentation of the defendant's image, reinforced as a constitutional guarantee of personality protection, one must start from the assumption that both constitutional values are essential to the free democratic order, so that none of them can claim absolute prevalence. He also added that, if possible, values should be

⁴² Cf. §24 da Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie. Available at: https://www.gesetze-im-internet.de/kunsturhg/_24.html.

⁴³ Germany, *Bundesverfassungsgericht*. *BVerfGE* 35, 202 – *Lebach*, de 5 de junho de 1973.

⁴⁴ Germany, *Bundesverfassungsgericht*. *BVerfGE* 35, 202 – *Lebach*, de 5 de junho de 1973.

harmonized. If this does not happen, the decision will have to consider the typical configuration and the special circumstances of the particular case to define which of the two interests should be overridden. He also stressed that "both constitutional values must be seen in their relationship with human dignity as the center of the axiological system of the Constitution".⁴⁵

In this sense, Alexandre Pereira points out that although generated within the "right to privacy", as it is known in the USA, the right to privacy, the protection of personal data has developed and acquired a "life of its own", based on the fundamental right to "informative self-determination", as designated by the German Federal Constitutional Court in its judgment of December 15, 1983, in the framework of a case relating to personal information collected during the 1983 census, in which the BFGH considered that, in the context of modern data processing, the protection of the individual against the unlimited collection, storage, use and disclosure of his personal data is covered by the fundamental right of each person to determine, in principle, the disclosure and use of his personal data, subject to this informational self-determination only to limitations justified by reasons of overriding public interest.⁴⁶

In the paradigm of the information society, decision-making processes, previously attributed to human beings, are increasingly defined by automated systems under the argument of greater rationalization and efficiency. The human capacity to process a lot of data does not compare to systems such as Artificial Intelligence. However, multiple challenges are generated that transcend the legal sphere, but which demand a response from it.⁴⁷

The right to be forgotten originates in the protection of intimacy and private life and has been invoked, especially in the digital world, as the right to erase personal data in the context of internet, but also in the context of the media in general, as a right not to broadcast information that is not current and relevant to the public, but offensive to the interested party.⁴⁸

⁴⁵ Carmona, Paulo Afonso Cavichioli, and Flávia Nunes de Carvalho Cavichioli. Carmona. A aplicação do direito ao esquecimento aos agentes delitivos: uma análise acerca da ponderação entre o direito à imagem e as liberdades de expressão e de informação. *Revista Brasileira de Política Pública*, v. 7(3): 436-452, 2017, 447.

⁴⁶ Pereira, Alexandre L. Dias. O Responsável pelo Tratamento de Dados Segundo o RGDP. *Revista de Direito e Tecnologia*, Vol. 1 (2019), N.º 2, 148.

⁴⁷ Korkmaz, Maria Regina Rigolon, and Mariana Sacramento. Direitos do Titular de Dados: Potencialidade e Limites na Lei Geral de Proteção de Dados Pessoais. *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro - PGE-RJ*, Rio de Janeiro, v. 4, n. 2, maio/agosto 2021, 20.

⁴⁸ Cueva, Ricardo Vilas Bôas. Proteção de Dados Pessoais e Direito ao Esquecimento. In: *Tratado de Proteção de Dados Pessoais*, edited by Danilo Doneda et al. Rio de Janeiro: Forense, 2020, 627.

When we return to the French teachings, the *droit à l'oubli* (analog to forgetting) elaborated in France involved three requirements: disclosure of licit information, the resurgence of past facts on television and, a time lapse sufficient to give rise to the loss of public interest in the information. In this phase, the right to be forgotten incorporates the temporal control of data, which fills the privacy protection tools with the chronological factor, complemented by spatial and contextual controls.⁴⁹

In this context, that right would be founded on the idea of protection against damage to dignity, personality rights, reputation and identity, and, by its nature, has the potential to collide with other fundamental rights, such as the right to freedom of expression and access to information. Its objective, therefore, is to limit information considered private from being disseminated and exposed, as the public interest would not justify this disclosure.⁵⁰

For Guilherme Magalhães Martins, the subject of the possibility of deleting information on the internet is a recurring topic. Is it fair to allow people to completely erase their web history? The Internet must be able to forget?⁵¹

In theory, for the author, the right to be forgotten is a critical issue in the digital age, as it is difficult to escape the past on the internet, as photos, status updates and tweets live forever in the cloud. The problem is that records from the past, which can be permanently stored, can have consequences after being forgotten by the human mind.⁵²

The Internet is an open network, designed more for show than hiding, which is even more evident with the use of mobile devices such as cell phones. Often, we don't know who owns information, how it was obtained, what the purpose of the entities that control it is, or what might be done with that information in the future.⁵³

For Stéfano Rodotà, with the creation of increasingly large databases accessible on the Internet through search engines, social memory expands and conditions individual memory. While before there was *damnatio*

⁴⁹ Boiteux, Elza Antônia Pereira Cunha. O direito ao esquecimento: uma lacuna na LGPD. In: *Lei Geral de Proteção de Dados: Ensaio e Controvérsias da Lei 13.709/18*, edited by Gustavo Ferraz de Campos Monaco, Ana Carolina Martins, and Solano Camargo. São Paulo: Quartier Latin, 2020, 235.

⁵⁰ Boiteux, Elza Antônia Pereira Cunha. O direito ao esquecimento: uma lacuna na LGPD. In: *Lei Geral de Proteção de Dados: Ensaio e Controvérsias da Lei 13.709/18*, edited by Gustavo Ferraz de Campos Monaco, Ana Carolina Martins, and Solano Camargo. São Paulo: Quartier Latin, 2020, 59.

⁵¹ Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021, 5.

⁵² Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021, 6.

⁵³ Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021, 7.

memoriae, now there is the obligation to remember, with the Internet's collective memory accumulating every vestige of people's lives, making them prisoners of a past that never passes and challenging the construction of a free personality. This leads to a need for adequate defenses, such as the right to be forgotten, not to know and not to be tracked, to protect privacy and individual freedom.⁵⁴

The emergence of the information society has resulted in an expansion of the right to be forgotten, but its nature and scope vary according to public and legal opinion. While people consider this right to be free and unlimited, jurists seek to delimit and balance it with other rights and freedoms provided for in the Constitution. At the moment, attention is mainly focused on the "right to be forgotten online", but it is necessary to establish a clear distinction between this right and the protection of personal data, as both aim to guarantee the dignity of the person.⁵⁵

The right to be forgotten has evolved over time, taking different forms according to the generation to which it belongs. The first is the right not to see news that has already been published republished after a certain period without current public interest. The second is the right to contextualize information, established by a decision of the Italian Court of Cassation. And the third is the right to erase personal data in certain situations, reaffirmed by the 2016 European Regulation.⁵⁶

Each of these generations protects a different legal asset: the first, reputation; the second, personal identity; and the third, personal data. Therefore, the right to be forgotten is not autonomous, but an important instrument to guarantee other personality rights, such as reputation, honor, privacy, and personal identity.⁵⁷

An important aspect that distinguishes the first generation of the internet from the others is time, which is fundamental to characterize the traditional and authentic right to be forgotten. On the internet, as we know, information and data are preserved eternally, therefore, the "time" factor does not apply to the duration or distance between an event and its publication, but to its persistence. In the traditional right to be forgotten, the news in question needs to be republished after years, while on the internet, information is

⁵⁴ Rodotà, Stefano. Dai Ricordi Ai Dati L' Oblio È Un Diritto?, *La Repubblica.it*, 30 de janeiro de 2012. Available in: <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2012/01/30/dai-ricordi-ai-dati-oblio-un.html>.

⁵⁵ De Cicco, Maria Cristina. O direito ao esquecimento existe. *civilistica.com*, v. 10, n. 1, p. 1-9, Aug. 1, 2021, 3.

⁵⁶ De Cicco, Maria Cristina. O direito ao esquecimento existe. *civilistica.com*, v. 10, n. 1, p. 1-9, Aug. 1, 2021, 3.

⁵⁷ De Cicco, Maria Cristina. O direito ao esquecimento existe. *civilistica.com*, v. 10, n. 1, p. 1-9, Aug. 1, 2021, 3.

always available, which has changed the way information is used, starting to be understood and used instantly. Although this requirement is important, it must be remembered that the antiquity of a fact does not legitimize the evocation and recognition of the right to be forgotten, but the potential damage that the republication of a person's experience can cause to the truth of the person's image now.⁵⁸

In the digital society, characterized by the second and third generations of the internet, the right to be forgotten is linked to the concept of archiving, due to the persistence of information on the internet. Therefore, republication is not necessary, but updating and contextualizing the information is important. The dynamics of the subjects involved also changed, in the first generation it was the journalist who proposed the republishing of a piece of news, while in the internet era, people themselves look for information about themselves or others on the web.⁵⁹

Internet consumer groups basically seek three needs, which can be summarized as information, entertainment, and relationship. First, the consumer can quickly find answers through a search platform, or even search tools within platforms such as social networks. In this context, the more content is offered on the platform, the more consumers are attracted, meeting their information needs.⁶⁰

Regarding entertainment, the consumer accesses content at a speed that did not exist before, without spatial boundaries. One of the characteristics of this digital universe is digital transmission, known as streaming, which replaces the purchase of physical media with the existence of applications on cell phones, tablets, and notebooks.⁶¹

The relationship, in turn, is facilitated on the internet by the existence of social networks, which have instant communication as one of their main characteristics. Social networks, along with collaborative websites, form social media, helping in the search for relationships by creating a sense of community by bringing individuals together virtually.⁶²

And in this scenario, based on the digital economy, given the three needs presented, the consumer finds tools to change his behavior and empower himself, becoming an active and more conscious subject in

⁵⁸ De Cicco, Maria Cristina. O direito ao esquecimento existe. *civilistica.com*, v. 10, n. 1, p. 1-9, Aug. 1, 2021, 4.

⁵⁹ De Cicco, Maria Cristina. O direito ao esquecimento existe. *civilistica.com*, v. 10, n. 1, p. 1-9, Aug. 1, 2021, 4.

⁶⁰ Quinelato, Pietra Daneluzzi. *Preços Personalizados à Luz da Lei Geral de Proteção de Dados: Viabilidade Econômica e Juridicidade*. Indaiatuba, SP: Editora Foco, 2022, 40.

⁶¹ Quinelato, Pietra Daneluzzi. *Preços Personalizados à Luz da Lei Geral de Proteção de Dados: Viabilidade Econômica e Juridicidade*. Indaiatuba, SP: Editora Foco, 2022, 41.

⁶² Quinelato, Pietra Daneluzzi. *Preços Personalizados à Luz da Lei Geral de Proteção de Dados: Viabilidade Econômica e Juridicidade*. Indaiatuba, SP: Editora Foco, 2022, 41.

decision-making, which can impact the advertising dynamics of companies.⁶³

The right to be forgotten is a complex issue that involves conflicts of interest. On the one hand, there is the public interest in maintaining the memory of the facts, along with freedom of the press and expression and the right of the community to information. On the other hand, there is a person's right not to be haunted for life by a past event. For this reason, it is important to balance the informative interest in disclosing news with the risks that remembering the fact can bring to the person involved.⁶⁴

The main objective of the right to be forgotten is to guarantee the "right not to be a victim of harm", and this includes obligations to do and not to do. If, after balancing interests, it is necessary to remove offensive material, this is the consequence of exercising the right to be forgotten. Compensation for damages will only be necessary in exceptional cases, when the offense is consummated and cannot be corrected by other means.⁶⁵

The right to be forgotten is not about erasing history or burning books, but it is important to be careful when importing institutes from other cultures, especially those with an exaggerated view of freedom of expression.⁶⁶

The right to be forgotten aims to erase traces or data left by its holder, not having the uniform trace of writing, as in unauthorized biographies; moreover, the a priori prevalence of freedom of expression and information, to avoid possible censorship, would go against other values equally dear to Fundamental Rights, linked to the free development of the human person.⁶⁷

Personalization is not limited to what we buy. It is influencing how information is distributed beyond social media, with news sites delivering headlines based on our personal interests and preferences. It also affects the videos we watch on video platforms and the blogs we follow. Personalization also impacts the emails we receive, the potential love connections we make on dating apps, and the restaurants that delivery apps recommend. In other words, personalization can easily influence not only who we go out to dinner with, but also where we go and what we talk about. The algorithms that control the advertising we receive are starting to take over our lives.⁶⁸

⁶³ Quinelato, Pietra Daneluzzi. *Preços Personalizados à Luz da Lei Geral de Proteção de Dados: Viabilidade Econômica e Juridicidade*. Indaiatuba, SP: Editora Foco, 2022, 41.

⁶⁴ Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021, 66.

⁶⁵ Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021, 66.

⁶⁶ Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021, 66.

⁶⁷ Cueva, Ricardo Vilas Bôas. Proteção de Dados Pessoais e Direito ao Esquecimento. In: *Tratado de Proteção de Dados Pessoais*, edited by Danilo Doneda et al. Rio de Janeiro: Forense, 2020, 627.

⁶⁸ Pariser, Eli. *O Filtro Invisível – O que a internet está escondendo de você*. Tradução

In summary, personalization can affect our ability to choose how we want to live our lives. It is important to be aware of all available options and lifestyles so that we can be the authors of our own stories. By entering the filter bubble, we let companies control what we see and what we are exposed to, which can lead us to a kind of informational determinism, where the choices we've made in the past determine what we'll see in the future. It keeps us trapped in a static, narrow version of ourselves, in constant repetition.⁶⁹

In other words, to protect the privacy of users and ensure the security of their data, it is necessary for those who have control over the systems to implement preventive measures. These measures include, among others, reducing the processing of personal data, incorporating privacy in designs, anonymizing data, allowing data subjects to monitor treatment, and conducting regular training with the teams involved. All this is to foster a culture of privacy prevention.⁷⁰

In the contemporary scenario, successive updates throughout the day inscribe and erase in minutes headlines and headlines that previously newspapers printed within a 24-hour period, characterizing the dematerialization of the first pages online. If, on the one hand, the first pages online are fluid and constantly changing, the links that lead to the articles printed on the covers of the sites, on the other hand, are perennial: everything is indexed and archived in search engines or in banks. data from the vehicles themselves. From which one concludes: the fuel for social memory continues to be produced.⁷¹

However, such memory in network journalism is now more fragmented. In digital collections of newspapers, it is possible to search the front pages – many of them memorable – according to dates or subjects. In network journalism, however, there is not a home page for the day, but several of them, as events unfold. None of them, however, are archived.⁷²

The right to be forgotten has a diverse scope, as it involves facts that, over time, have lost historical relevance, so that their disclosure becomes abusive, as it causes more harm to individuals than benefits to society. The

por Diego Alfaro. Editora Zahar. Kindle Version. Digital Edition, 2012, 139-149.

⁶⁹ Pariser, Eli. *O Filtro Invisível – O que a internet está escondendo de você*. Tradução por Diego Alfaro. Editora Zahar. Kindle Version. Digital Edition, 2012, 250-255.

⁷⁰ Faleiros Júnior, José Luiz de Moura, and Arthur Pinheiro Basan. Discriminação algorítmica, profiling e geolocalização: uma análise dos impactos jurídicos do geo-pricing e geo-blocking. *Revista Meritum*, v. 16(3): 302-320, 2021, 314.

⁷¹ Barsotti, Adriana. Memória e esquecimento no jornalismo: Do papel à desmaterialização digital. *ALCEU – Revista de Comunicação, Cultura e Política. Rio de Janeiro: PUC-Rio*, v. 20 (40): 10-26, 2020, 19.

⁷² Barsotti, Adriana. Memória e esquecimento no jornalismo: Do papel à desmaterialização digital. *ALCEU – Revista de Comunicação, Cultura e Política. Rio de Janeiro: PUC-Rio*, v. 20 (40): 10-26, 2020, 19.

right to be forgotten, it is true, is an exceptional right, and cannot be trivialized, but its exclusion, based on general repercussions, may imply a serious setback in the face of the principle of human dignity, considering privacy and identity. personnel, which compose it in its structure.⁷³

The decision of the German Infraconstitutional Court, *Bundesgerichtshof* (BGH), of July 27, 2020, which stated that the right to erasure, and therefore the right to de-indexing, is not absolute. For the Court, Art. 17, paragraph 1, GDPR does not apply if data processing is necessary for the exercise of the right to freedom of expression. This circumstance is the expression that the right to the protection of personal data is not an unrestricted right. As the fourth recital of the GDPR states, about their social function and maintaining the principle of proportionality against other fundamental rights, they must be weighed, and this balancing of fundamental rights is based on all the relevant circumstances of the individual case. The seriousness of the interference with the fundamental rights of the data subject must also be considered.⁷⁴

It is important to consider that any data management policy or practice must include agreements between controllers and data operators with common and desirable objectives. This means that responsibility for bad data handling practices involves balancing appropriate and expected actions by these agents to prevent tensions that result in the loss of user self-determination and the manipulation of consumer choice.⁷⁵

When addressing the issue of privacy protection, it is essential that a series of good practices be implemented to ensure the prevention of risks related to personal data. This is particularly relevant for companies that operate in data-rich markets and that, by controlling the architecture and programming of platforms, can override state regulation and oversight. The guarantee of non-discrimination and the principle of net neutrality thus become issues that require an investigation into the limits of economic freedom.⁷⁶

The right to be forgotten allows an individual to control their personal data if it is no longer necessary for its original purpose, or if, for some other

⁷³ Martins, Guilherme Magalhães, and João Alexandre Silva Alves Guimarães. Direito ao esquecimento no STF: a dignidade da pessoa humana em risco. *Consultor Jurídico*, São Paulo, February 10, 2021.

⁷⁴ Germany, *Bundesgerichtshof*. VI ZR 405/18, Verkündet am: 27. Juli 2020. Frankfurt am Main. 2020.

⁷⁵ Faleiros Júnior, José Luiz de Moura, and Arthur Pinheiro Basan. Discriminação algorítmica, profiling e geolocalização: uma análise dos impactos jurídicos do geo-pricing e geo-blocking. *Revista Meritum*, v. 16(3): 302-320, 2021, 314.

⁷⁶ Faleiros Júnior, José Luiz de Moura, and Arthur Pinheiro Basan. Discriminação algorítmica, profiling e geolocalização: uma análise dos impactos jurídicos do geo-pricing e geo-blocking. *Revista Meritum*, v. 16(3): 302-320, 2021, 314.

reason, they wish to withdraw their consent to its processing, among other reasons.⁷⁷

Data protection is understood as a guarantee, but its underlying principle, informational self-determination, is considered a freedom. Informational self-determination is a complex legal position that encompasses elements of different fundamental active rights.⁷⁸

In the end, one needs to balance security and freedom: it is necessary to have both, but it is not possible to have one without sacrificing, at least in part, the other. The more we have of one, the less we have of the other. When it comes to freedom, it's just the opposite. You can choose to simply delete or decide to stop being interfered with.⁷⁹

CONCLUSION

The Right to be Forgotten should be considered a personality right. Starting from the basic principle, the right to be forgotten protects the honor, image, and privacy of internet users from wide dissemination, when not authorized, or can restrict the circulation of information that does not match reality. This can easily be observed in the exemplified cases, where the courts recognized the right to be forgotten for the protection of the victim's personality rights.

On the other hand, with the advent of the internet, now information is starting to be stored in mass. Social networks and search engines bring information to the screen of each user according to the tastes and preferences of each one, no longer caring about the date of publication or the veracity of the information, but only in the simple fact that what appears on the screen can fix the user for longer in your service.

Which generates a dichotomy in relation to the facilities that these tools bring in the day to day in the face of the protection of the intimate life of each user. The main question is to what extent is the information that is used as the basis for creating each user's digital profile correct? Or even, can the user change this information or delete it if they do not consider it relevant or real? In a generation where everything is posted, everything is commented on and everything is on the internet, the Artificial Intelligence database grows more and more and becomes precise in its actions, which makes the user

⁷⁷ Safari, Beata A. Intangible Privacy Rights: How Europe's GDPR Will Set a New Global Standard for Personal Data Protection. *Seton Hall Law Review*, Volume 47, 809-848, 2017, 835.

⁷⁸ Pinheiro, Alexandre de Sousa. *Privacidade e Protecção de Dados Pessoais: A Construção Dogmática do Direito à Identidade Informacional*. AAFDL, Lisboa, 2015, 805.

⁷⁹ Bauman, Zygmunt, and David Layon. *Vigilância Líquida*. Rio de Janeiro: Zahar, 2013, 44.

hostage to his own past and his old choices.

The Right to be Forgotten brings a possibility for people to show what they really are in the online world. It brings the perspective that society can evolve, that thoughts can change, and old information and publications may no longer represent the essence of what the internet user is today.

It brings the possibility that information published wrongly, a leak of a personal data, news taken out of context, a wrongly interpreted speech does not cause eternal damage to the user, or even, does not entail and predestine the future of that person in the online environment with reflections in everyday life. Forgetting this information can bring a dignified life to a technology user.

The Right to be Forgotten does not come to erase history or hide the acts of wrongdoers. It comes to bring justice, the right to repentance, to bring dignity, to cherish the privacy of those who are hostage to their data and their past decisions that no longer represent them. Making personality rights prevail and the user can maintain his image, his honor, and his privacy, even in the online world.

REFERENCES

- Barbosa, Mafalda Miranda, and Tomás Prieto Álvarez. *O Direito ao Livre Desenvolvimento da Personalidade: Sentidos e Limites*. Coimbra: Gestlegal, 2020.
- Barsotti, Adriana. Memória e esquecimento no jornalismo: Do papel à desmaterialização digital. *ALCEU – Revista de Comunicação, Cultura e Política*. Rio de Janeiro: PUC-Rio, v. 20 (40): 10-26, 2020.
- Bauman, Zygmunt, and David Lyon. *Vigilância Líquida*. Rio de Janeiro: Zahar, 2013.
- Boiteux, Elza Antônia Pereira Cunha. O direito ao esquecimento: uma lacuna na LGPD. In: *Lei Geral de Proteção de Dados: Ensaio e Controvérsias da Lei 13.709/18*, edited by Gustavo Ferraz de Campos Monaco, Ana Carolina Martins, and Solano Camargo. São Paulo: Quartier Latin, 2020. p. 231-240.
- Carmona, Paulo Afonso Cavichioli, and Flávia Nunes de Carvalho Cavichioli Carmona. A aplicação do direito ao esquecimento aos agentes delitivos: uma análise acerca da ponderação entre o direito à imagem e as liberdades de expressão e de informação. *Revista Brasileira de Política Pública*, v. 7(3): 436-452, 2017.
- Cooley. Thomas M. *A treatise on the Law of Torts, or, The wrongs which arise independent of contract*. 2^a Edition, Chicago: Callaghan and Company, 1879.

- Court of Appeal of California, *Fourth District. Melvin v. Reid*, 112 Cal.App. 285, 297 P. 91 (1931).
- Cueva, Ricardo Vilas Bôas. Proteção de Dados Pessoais e Direito ao Esquecimento. In: *Tratado de Proteção de Dados Pessoais*, edited by Danilo Doneda et al. Rio de Janeiro: Forense, 2020. p. 627-640.
- De Cicco, Maria Cristina. O direito ao esquecimento existe. *civilistica.com*, v. 10, n. 1, p. 1-9, Aug. 1, 2021.
- Eoyang, Mieke. Beyond Privacy and Security: The Role of the Telecommunications Industry in Electronic Surveillance. *Journal of National Security Law & Policy*, 2017.
- Faleiros Júnior, José Luiz de Moura, and Arthur Pinheiro Basan. Discriminação algorítmica, profiling e geolocalização: uma análise dos impactos jurídicos do geo-pricing e geo-blocking. *Revista Meritum*, v. 16(3): 302-320, 2021.
- Germany, *Bundesgerichtshof. VI ZR 405/18*, Verkündet am: 27. Juli 2020. Frankfurt am Main. 2020.
- Germany, *Bundesverfassungsgericht. BVerfGE 35, 202 – Lebach*, de 5 de junho de 1973.
- Gonçalves. Luiz da Cunha. *Tratado de Direito Civil: em comentário ao Código Civil Português*. Volume 1. Coimbra: Coimbra Editora, 1929.
- Guimarães, João Alexandre Silva Alves. O Direito ao Esquecimento como Ferramenta de Defesa nas Novas Tecnologias. In: *Tutela Jurídica do Corpo Eletrônico: novos desafios ao direito digital*, edited by Cristiano Colombo, Wilson Engelmann, and José Luiz de Moura Faleiros Júnior. Indaiatuba: Editora Foco, 2022.
- Korkmaz, Maria Regina Rigolon, and Mariana Sacramento. Direitos do Titular de Dados: Potencialidade e Limites na Lei Geral de Proteção de Dados Pessoais. *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro - PGE-RJ*, Rio de Janeiro, v. 4, n. 2, maio/agosto 2021.
- Martins, Guilherme Magalhães. O direito ao esquecimento como direito fundamental. *civilistica.com*, v. 10, n. 3, p. 1-70, December 7, 2021.
- Martins, Guilherme Magalhães, and João Alexandre Silva Alves Guimarães. Direito ao esquecimento no STF: a dignidade da pessoa humana em risco. *Consultor Jurídico*, São Paulo, February 10, 2021.
- Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Princeton: Princeton University Press, 2011.
- Pariser, Eli. *O Filtro Invisível – O que a internet está escondendo de você*. Tradução por Diego Alfaro. Zahar, Digital Edition, 2012.
- Pereira, Alexandre L. Dias. O Responsável pelo Tratamento de Dados Segundo o RGDP. *Revista de Direito e Tecnologia*, Vol. 1 (2019), N.º 2, 143-173.

- Pinheiro, Alexandre de Sousa. *Privacy e Protecção de Dados Pessoais: A Construção Dogmática do Direito à Identidade Informacional*. AAFDL, Lisboa, 2015.
- Pinto, Carlos Alberto da Mota, António Pinto Monteiro, and Paulo Mota Pinto. *Teoria Geral do Direito Civil*. Coimbra: Gestlegal, 2020.
- Quinelato, Pietra Daneluzzi. *Preços Personalizados à Luz da Lei Geral de Protecção de Dados: Viabilidade Económica e Juridicidade*. Indaiatuba, SP: Editora Foco, 2022.
- Rodotà, Stefano. *A Vida na Sociedade da Vigilância: A privacidade hoje*. Rio de Janeiro: Renovar, 2008.
- Rodotà, Stefano. *Dai Ricordi Ai Dati L' Oblío È Un Diritto?*, *La Repubblica.it*, 30 de janeiro de 2012. Available in: <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2012/01/30/dai-ricordi-ai-dati-oblio-un.html>.
- Rodotà, Stefano. *Tecnologie e diritti*. Edição do Kindle. Bolonha: Società editrice il Mulino, 2021.
- Safari, Beata A. *Intangible Privacy Rights: How Europe's GDPR Will Set a New Global Standard for Personal Data Protection*. *Seton Hall Law Review*, Volume 47, 809-848, 2017.
- Schacter, Daniel L. *The Seven Sins of Memory: How the Mind Forgets and Remembers*. Update Edición, Edição do Kindle, Boston/New York: Houghton Mifflin Harcourt, 2021.
- Souza, Bernardo de Azevedo e. *Direito, Tecnologia e Práticas Punitivas*. Kindle Edition, Porto Alegre: Canal Ciências Criminais, 2016.
- Warren, Samuel D., and Louis D. Brandeis. *The Right to Privacy*. *Harvard Law Review*, v. IV, n. 5, 1890.
- Zanetti, Marcelo Callegari. *Second Life®: Corpo ou Avatar? Realidade Ou Fantasia?* Thesis (Ph.D in Desenvolvimento Humano e Tecnologias Área de Tecnologias, Corpo e Cultura) - Universidade Estadual Paulista “Júlio de Mesquita Filho” (UNESP). Rio Claro, 2013.

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