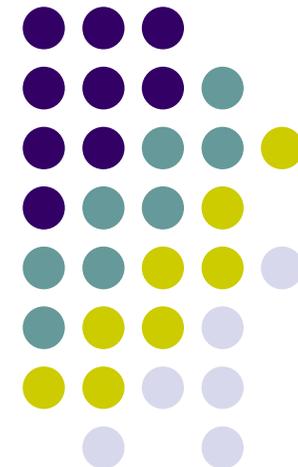




Data protection - Challenges for German libraries -



Harald Müller

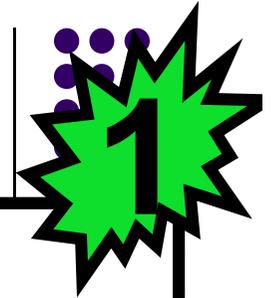


Topics



1. Legal basics
2. GDPR and libraries
3. Publicly accessible information
4. Right to be forgotten

Legal basics



- „Volkszählungsurteil“ (Census act judgment)
German constitutional court (BVerfGE 65, 1) 15 December 1983, which established in Germany a **Fundamental Right** on Informational Self-Determination
- **Regulation (EU) 2016/679 of the European Parliament and of the Council** of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - OJ EU 4.5.2016 L 119/1)
- **Lei da Protecção de Dados Pessoais** (Lei n.o 67/98)
(Diário da República — I Série-A N.o 247 — 26-10-1998) 
- **Bundesdatenschutzgesetz** (Federal data protection act)
of 30 June 2017 (BGBl. I p. 2097) 



Census act judgement 1983



Headnotes:

1. Given the context of modern data processing, the protection of individuals against **unlimited** collection, storage, use and transfer of their **personal data** is subsumed under the **general right of personality** governed by Article 2.1 in conjunction with Article 1.1 of the Basic Law (Grundgesetz - GG). In that regard, this **fundamental right** guarantees in principle the power of individuals to **make their own decisions** as regards the disclosure and use of their personal data.
2. Restrictions of this right to **"informational self-determination"** are permissible only in case of an overriding general public interest. Such restrictions must have a constitutional basis that satisfies the requirement of legal certainty in keeping with the rule of law. The legislature must ensure that its statutory regulations respect the principle of proportionality. The legislature must also make provision for organizational and procedural precautions that preclude the threat of violation of the right of personality.
- 3...



In force since: 25 May 2018



4.5.2016

EN

Official Journal of the European Union

L 119/1

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,



Registration for a library card

Please fill in the following registration form. After sending it, you will receive a confirmation via email.

Compliance of library regulations

Declaration*

- I certify that I have read the User regulations, available in German only for legal reasons (BenO) of the Göttingen State and University Library and that I agree to abide by them.

Data protection consent

Declaration*

- The operation of a library is not possible without the processing of personal data. I hereby consent to the processing of my user and usage data necessary for operational purposes (cf. User Regulations BenO § 5, available in German only for legal reasons) by the Göttingen State and University Library and the underlying basic services of the University of Göttingen. For inter-library loan purposes, part of user data (name, address and user number) need to be imparted to other libraries and temporarily processed there. I hereby consent to the imparting and processing of my user data for inter-library loan purposes. I may revoke my consent at any time in writing.

SUB

NIEDERSÄCHSISCHE STAATS- UND
UNIVERSITÄTSBIBLIOTHEK GÖTTINGEN

Consent



L 119/6

EN

Official Journal of the European Union

4.5.2016

(Recital 32) Consent should be given by a **clear affirmative act** establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include **ticking a box** when visiting an internet website, choosing technical settings for information society services or **another statement or conduct** which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. **Silence, pre-ticked boxes or inactivity should not therefore constitute consent.** Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

Consent



- **Clear explanation** or affirmative action of the person concerned
- **Silence is not enough**
 - no written form requirement, also electronic explanation possible (»checkbox«)
 - but: **proof** that consent is given to guide the person responsible (burden of proof)
 - Consequences: with electronic declaration protocol necessary, at any time retrieval option
 - Double opt-in procedure necessary, e.g. when ordering newsletters
- **Withdrawal option** for the future >>> The affected person must be informed that he / she can revoke the declaration for the future

Information

» *precise, transparent, understandable and easily accessible form in a clear and simple language* «



Must be available in concrete situation, i. e. in written communication normally no reference to the internet allowed

- Name, contact details of the responsible person
- Contact details of the data protection officer
- Purposes of processing, legal bases
- for data processing according to Art. 6 para. 1 lit. f) the legitimate interest
- if applicable, recipient of personal data (including processors on behalf)
- at the time of collecting the data
- Storage duration
- Affected rights (information, correction, deletion, etc.)
- with consent, notice of right of withdrawal
- Right of appeal to the supervisory authority
- If applicable, reference to legal or contractual obligation to provide the data and consequences of non-provisioning

Staatsbibliothek zu Berlin
Preußischer Kulturbesitz

Suche

StaBiKat stabikat+ Webseite

Contact
Information
Opening hours
A - Z
Library Account
Sitemap

Research Service Locations Collections About the library News

Start Imprint Privacy Policy Deutsch

Privacy Policy

- Legal notice to the liability
- Privacy Policy
- Spezifischer Datenschutz

- Name and address of the responsible person
- General information on data processing
- Provision of the website and creation of log files
- Use of cookies
- Web analysis by Matomo (formerly PIWIK)
- Online presences in social media
- Rights of the data subject

I. Name and address of the responsible person

The person responsible corresponding to EU General Data Protection Regulation and other data protection regulations is:

Foundation of Prussian Cultural Heritage, legally represented by its president, Prof. Dr. Dr. h.c. mult. Hermann Böttger
Von-der-Heydt-Str. 16
E-mail: info@hv.spk.de

Privacy Officer:
E-mail: Datenschutz@hv.spk.de



2. Legal basis for the processing of personal data

Insofar as we obtain the consent of the data subject for the processing of personal data, **Art. 6 para. 1 lit. a** EU General Data Protection Regulation (GDPR) serves as the legal basis.

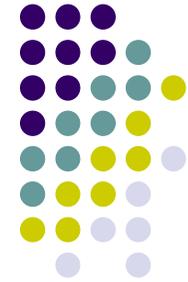
In the processing of personal data required for the performance of a contract to which the data subject is a party, Art. 6 para. 1 lit. b GDPR serves as the legal basis. This also applies to processing operations that are necessary to carry out pre-contractual measures.

Insofar as the processing of personal data as a task of our public authority is in the public interest, Art. 6 para. 1 lit. e GDPR serves as the legal basis. In the event that the vital interests of the data subject or another natural person require the processing of personal data, Article 6 para.1 lit.d GDPR serves as the legal basis.

If processing is necessary to safeguard a legitimate interest of our company or a third party and if the interests, fundamental rights and freedoms of the data subject do not outweigh the first-mentioned interest, Art. 6 para. 1 lit. f DSGVO serves as the legal basis for processing.

3. Erasure of data and storage time

Libraries & GDPR



- **Key words >>> Consent & Information**
- User regulations >>> Notice on data protection
- Explicit signature upon registration = consent in data processing
- Lending data must be deleted after media return
- User account must be deleted after invalidity of the ID card
- Access to user account must be blocked for third parties
- Data transfer only to courts

Publicly accessible information

kalaydo.de das regionale Findernet » stellen » auto » immobilien » marktplatz » inserieren » zeitungsanzeige aufgeben

rz-Shop | RZ-Card | rz-Leserreisen | Kevag Telekom RZ-Blog | Twitter | MobilRSS | Kontakt

Rhein-Zeitung
rzonline nachrichten

Suchen

RZ-Online Internet
Zeitung Lexikon

18.11.1997 < Schnell-Navigation >



startseite

- Deutschland & Welt
- Wirtschaft
- Wissenschaft
- Wetter
- Karikatur
- Ticker
- Archiv
- Lexikon

regioticker

- regiolinks
- aus dem Land
- „mehr“ aus der RZ
- Leser-Forum

sport

- Fußball
- Formel 1
- SportsLine
- Sporttabellen
- Bundesliga-Tippspiel

magazin

- Kino
- Kinoprogramm
- Lifestyle
- Musik

kinowelt videowelt fotowelt meinewelt

RZ-Online Artikelarchiv vom 18.11.1997

[ERROR #404=Not Found File=http://rhein-zeitung.de/http://rhein-zeitung.de/tools/2001/lvwpixel.htm]

Mit der eigenen Mode vor die Kamera

Dörthe Wirth gilt als jüngste Haute-Couture-Designerin Deutschlands - Mit Können und Kampfgeist in den Beruf gestartet

Noch bestimmen die... [weiterlesen](#)

Angezeigt werden ca. 72 von 1035 Wörtern.

Hinweis: Dieser Artikel stammt aus unserem Archiv.
Die darin enthaltenen Informationen könnten inzwischen überholt sein!

18.11.1997 © Rhein-Zeitung

[Artikel empfehlen](#)

[Leserbriefe](#)

[Impressum](#)



Challenge 1



Rhineland-Palatinate Bibliography

[Browse by Classification](#) | [Browse by Regions](#) | [Browse by Towns](#)

[Contact](#)

[Search](#) | [Other Regional Bibliographies](#) | [RPPD](#) | [Info](#) | [Download](#) | 

		Delete Query	
	Free Search ▾	<input type="text"/>	<input type="button" value="Index"/>
AND ▾	Authors ▾	<input type="text"/>	<input type="button" value="Index"/>
AND ▾	Title Words ▾	Dörthe Wirth	<input type="button" value="Index"/>
AND ▾	Subject headings ▾	<input type="text"/>	<input type="button" value="Index"/>
AND ▾	Towns and Regions ▾	<input type="text"/>	<input type="button" value="Index"/>
	Year of Publication	from <input type="text"/> to <input type="text"/>	
		<input type="button" value="Search"/>	

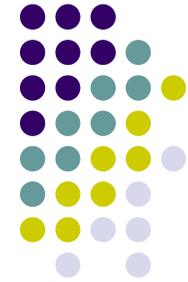
Free Search

Enter in any order:

Keywords from the title, names, subject headings, Words from corporate names, keywords from series titles, publication year, publication place, publishing companies, numbers, ISBN, ISSN.

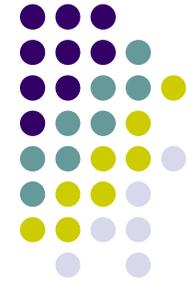
Truncate with "*", e.g.: "kurfürst*" (finds also "Kurfürstentum", "kurfürstlich" etc.)

Catalog = data system



- ◎ Personal data
- ◎ Names of authors, editors, **involved persons** etc.
- ◎ cataloging = collect & store personal data
- ◎ Catalog search = transmit personal data
- ◎ Data Protection Officer Rhineland-Palatinate intervened 1998 in the case of Dörthe Wirth

Catalog = data system



§ 12 Data protection act DSGVO-RP (old) Collecting data

...

(4) A collection of personal data from third parties is only permitted if

...

9. the data are **publicly accessible**.

In the cases of sentence 1, nos. 7 to 9, a third-party survey is only admissible if there are no indications that they conflict with the **overriding interests** of those concerned.

Catalog = data system



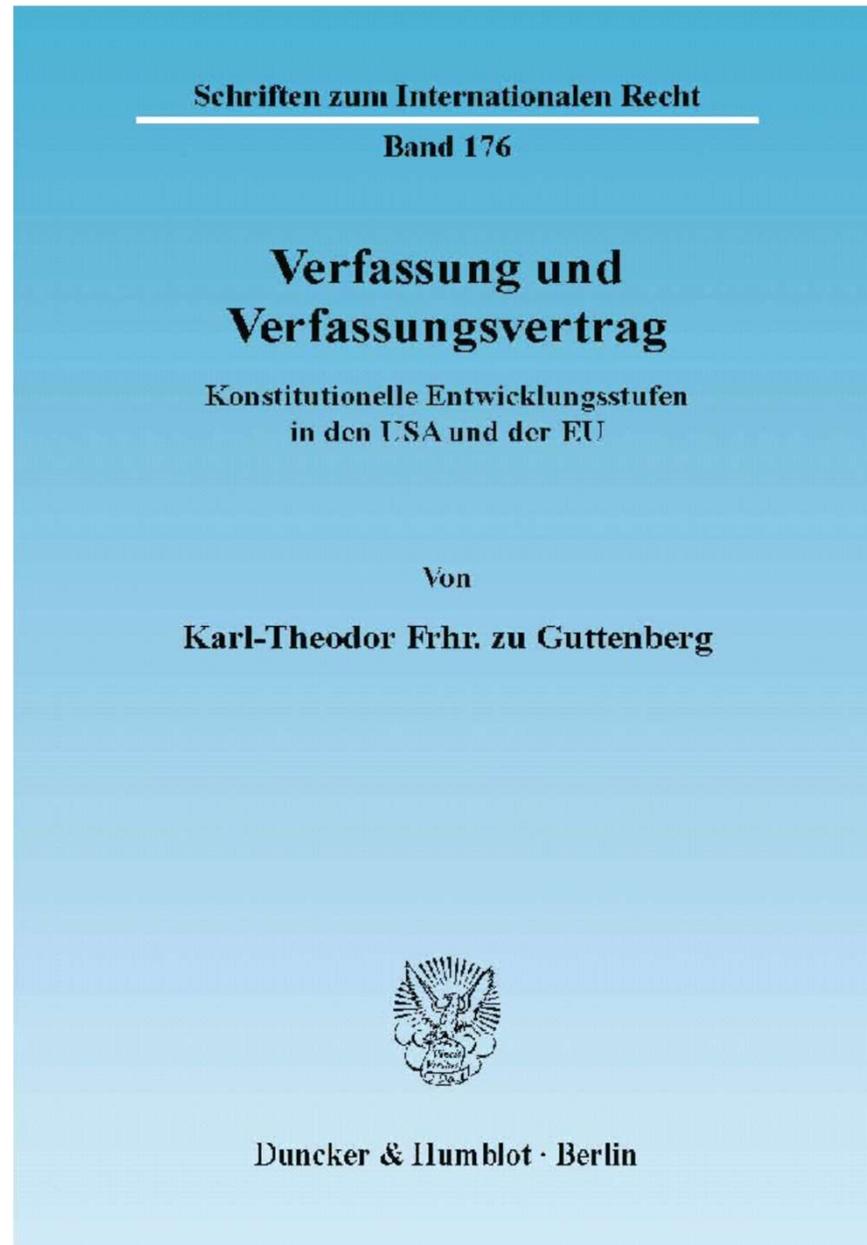
Artikel 14 GDPR Information to be provided where personal data have not been obtained from the data subject

(1) Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

...

(2) ...

f) from which source the personal data originate, and if applicable, whether it came from **publicly accessible sources;**



Challenge 2



suchen [und] sortiert nach Relevanz
 Suchen Eingabe löschen
 nur Zeitschriften/Serien/Datenbanken nur Online-Ressourcen Unschärfe Suche

Suchgeschichte | Kurzliste | **Vollanzeige** | Besitznachweis(e)

 Recherche
beenden

2 von 4

Ihre Aktion: suchen [und] (Suche über alles [ALL]) Guttenberg Verfassung

Felder | MARC21 | ISBD | Citavi, Referencemanager (RIS) | Endnote Tagged Format | BibTex-Format | RDF-Format

Ergebnisanalyse


 Speichern/
Druckansicht

PPN: 302844716 [Zitier](#)

Titel: [Verfassung und Verfassungsvertrag](#) : konstitutionelle Entwicklungsstufen in den USA und der EU / von Karl-Theodor zu **Guttenberg**

Verfasser: [Guttenberg, Karl-Theodor zu](#), 1971-

Erschienen: Berlin : Duncker & Humblot, 2009

Umfang: 475 S.

Sprache(n): Deutsch

Schriftenreihe: [Schriften zum internationalen Recht ; 176](#)

Hochschulschrift: Zugl.: Bayreuth, Univ., Diss., 2007

Anmerkung: Plagiat. - Datum der Promotion: 27. Februar 2007 (Tag des Kolloquiums). - Aushändigung der Promotionsurkunde: 28. Januar 2009. - Entzug des Doktorgrades am 23. Februar 2011 durch die Promotionskommission der Rechts- und Wirtschaftswissenschaftlichen Fakultät der Universität Bayreuth

Bibliogr. Zusammenhang: Online-Ausg.: [Verfassung und Verfassungsvertrag / Guttenberg, Karl-Theodor zu](#)
 Rezension: [Karl-Theodor Frhr. zu Guttenberg, Verfassung und Verfassungsvertrag. Konstitutionelle Entwicklungsstufen in den USA und der EU, Berlin \(Duncker & Humblot\) 2009, 475 S., 88,- € / Fischer-Lescano, Andreas](#)

ISBN: 978-3-428-12534-0
EAN: 9783428125340
Sonstige Nummern: OCLC: 310130712

Art und Inhalt: Hochschulschrift

RVK-Notation: [PL 728](#) [INFO](#) | [PL 625](#) [INFO](#) [Ähnliche Literatur](#)

Sachgebiete: [DDC 342.73029](#) ; [DDC 342.24029](#)

Schlagwortfolge: *[Europäische Union](#) ; [Verfassungsrecht](#) ; [Rechtsvergleich](#) ; [USA](#) [Zum Register](#)
 *[Europäische Union / Verfassung \(Entwurf\) \(2003\)](#) ; [Präambel](#) ; [Gott](#) ; [USA / Verfassung \(1787\)](#) [Zum Register](#)

Mehr zum Titel: [Rezension](#) [Plagiatnachweis](#) [Presseerklärung der Univ. Bayreuth vom 23.02.2011](#) [Inhaltsverzeichnis](#)

Andere Benutzer fanden auch interessant:

[Karl-Theodor Frhr. zu Guttenberg. Verfassung und Verfassungsvertrag. Konstitutionelle Entwicklungsstufen in den USA und der EU. Berlin \(Duncker &](#)

General Data Protection Regulation EU 2016/679



Article 17 Right to erasure ('right to be forgotten')

1. The data subject shall have **the right to obtain** from the controller the **erasure of personal data** concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

...

General Data Protection Regulation EU 2016/679



Article 17 Right to erasure ('right to be forgotten')

...

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the **erasure** by such controllers of any links to, or copy or replication of, **those personal data**.

3. Paragraphs 1 and 2 **shall not apply** to the extent that processing is necessary:

- (a) for exercising the **right of freedom of expression and information**;
- (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) for **archiving purposes in the public interest, scientific or historical research purposes** or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing;
or
- (e) for the establishment, exercise or defence of legal claims.

General Data Protection Regulation EU 2016/679



(Recital 65) A data subject should have the right to have personal data concerning him or her rectified and a **'right to be forgotten'** where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the **right of freedom of expression and information**, for compliance with a legal obligation, for the performance of a task carried out in the **public interest** or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, **scientific or historical research purposes** or statistical purposes, or for the establishment, exercise or defence of legal claims.

Human right to Information



- Art. 19 Universal Declaration of Human Rights

Article 19 (Freedom of opinion and information)

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to **seek, receive and impart information** and ideas through any media and regardless of frontiers.

guarantee

Freedom of Information



International Federation of
Library Associations and Institutions



Statement on Libraries and Intellectual Freedom

- IFLA (The International Federation of Library Associations and Institutions) supports, defends and promotes intellectual freedom as defined in the United Nations Universal Declaration of Human Rights.
- IFLA declares that human beings have a fundamental **right to access** to expressions of knowledge, creative thought and intellectual activity, and to express their views publicly.
- IFLA believes that the right to know and freedom of expression are two aspects of the same principle. The right to know is a requirement for freedom of thought and conscience; freedom of thought and freedom of expression are necessary conditions for **freedom of access to information**.

<https://www.ifla.org/publications/ifla-statement-on-libraries-and-intellectual-freedom->



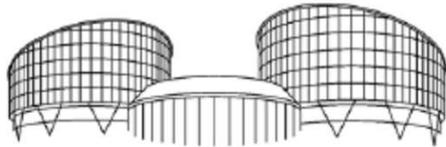
Factsheet on the “Right to be Forgotten” ruling (C-131/12)



1) What is the case about and what did the Court rule?

Individuals have the right – under certain conditions – to ask search engines to remove links with personal information about them. This applies where the information is **inaccurate, inadequate, irrelevant or excessive** for the purposes of the data processing... The right to be forgotten is **not absolute** but will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media.

>>> https://www.inforights.im/media/1186/cl_eu_commission_factsheet_right_to_be-forgotten.pdf



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release

issued by the Registrar of the Court

ECHR 237 (2018)

28.06.2018

The public's right to access archived material online took precedence over the right of convicted persons to be forgotten

In today's **Chamber** judgment¹ in the case of [M.L. and W.W. v. Germany](#) (application nos. 60798/10 and 65599/10) the European Court of Human Rights held, unanimously, that there had been:

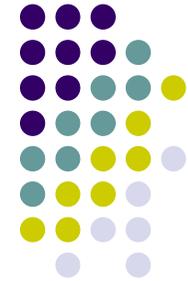
no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned the refusal by the Federal Court of Justice to issue an injunction prohibiting three different media from continuing to allow Internet users access to documentation concerning the applicants' conviction for the murder of a famous actor and mentioning their names in full.

The Court shared the findings of the German Federal Court, which had reiterated that the media had the task of participating in the creation of democratic opinion, by making available to the public old news items that had been preserved in their archives.

The Court reiterated that the approach to covering a given subject was a matter of journalistic freedom and that Article 10 of the Convention left it to journalists to decide what details ought to be published, provided that these decisions corresponded to the profession's ethical norms. The inclusion in a report of individualised information, such as the full name of the person in question, was an important aspect of the press's work, especially when reporting on criminal proceedings

Right to be forgotten



IFLA Statement on the Right to be Forgotten (2016)

Introduction

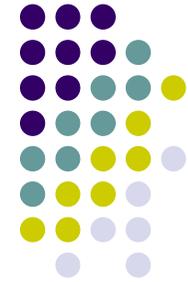


International Federation of
Library Associations and Institutions

The "right to be forgotten" refers to an individual's ability to request that a search engine (or other data provider) remove links to information about himself or herself from search results. This has also been referred to as the "right to delist," the "right to obscurity," the "right to erasure" or the "right to oblivion." In the media, the terms may be used interchangeably or be differentiated based on legal scope. In this document, the "right to be forgotten" (RTBF) is used as a general term for these concepts and their application.

<https://www.ifla.org/publications/node/10320>

Right to be forgotten & Libraries



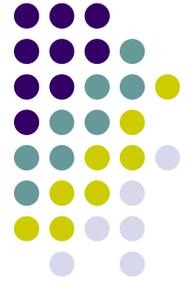
Opposing interests

International treaties guarantee **unrestricted access to information**. Libraries and archives are **memory institutions**. In some cases, courts questioned whether an archive should be forced to "change history" by deleting personal information.

Main Points

- The right to erasure, as provided by data protection law, was rarely the only legal ground in court
- Forgetting can also be achieved by other means than deletion
- Easy access and quick retrieval of personal information through search engines is the primary concern of individuals regarding their online privacy
- Sometimes the right to be forgotten can be waived
- While forgetting and erasing are complementary legal instruments, the right to erasure has the potential to neglect the careful consideration of conflicting interests
- The right to be forgotten is a generic term that brings together the existing rights of forgetting and deletion
- No right to be erased, forgotten or forgotten can be absolute, but must be carefully weighed against the **freedom of speech** and **information**. For the latter is rightly a cornerstone of a democratic society.

Freedom of information



Freedom's just another word for nothing' left to lose:

Nothin' ain't worth nothin' but it's free.



Me and Bobby McGee by Kris Kristofferson & Fred Foster

http://www.ombudsman-fuer-die-wissenschaft.de/fileadmin/Ombudsman/Dokumente/Downloads/Schwartmann_Gutachten_Ombudsman_26092018.pdf
Schwartmann/Hermann/Mühlenbeck, Die Veröffentlichung des Entzuges von Doktorgraden, in: RDV 2018, S. 252-256.



Recommendation by Prof. Schwartmann

1. The decision on the withdrawal of the doctoral degree should be communicated to the respective university library by the university management immediately after their unavailability.
2. In the catalog of the university libraries data should be recorded uniformly (behind the university publication note): **"Doctoral degree withdrawn by ... on ... because ..."**.
3. The copies should remain fully usable, if not for other reasons, e.g. certainly established copyright dissemination prohibitions, restrictions are required.
4. In order to increase legal certainty, the above-mentioned measures should be safeguarded by regulations in the **university legislation** of the German states.

Deletion claim after expiry of time (Right to be forgotten)



Schwartmann report:

The person concerned does not have a "right to be forgotten" after about ten years, or, more precisely, is not entitled to delete the note in the library catalogue, because the purpose remains for the information contained in the data processing. In any case, as long as the work involved is available, the integrity of science can only be preserved through the public survival of the withdrawal notice. **Just as plagiarism does not become prescriptive, so does the obligation to make it public.**

Thank you very much for attending!

Questions?



Dr. Harald Müller

mueller@urheberrechtsbuendnis.de

hmueller.mpil@gmx.de