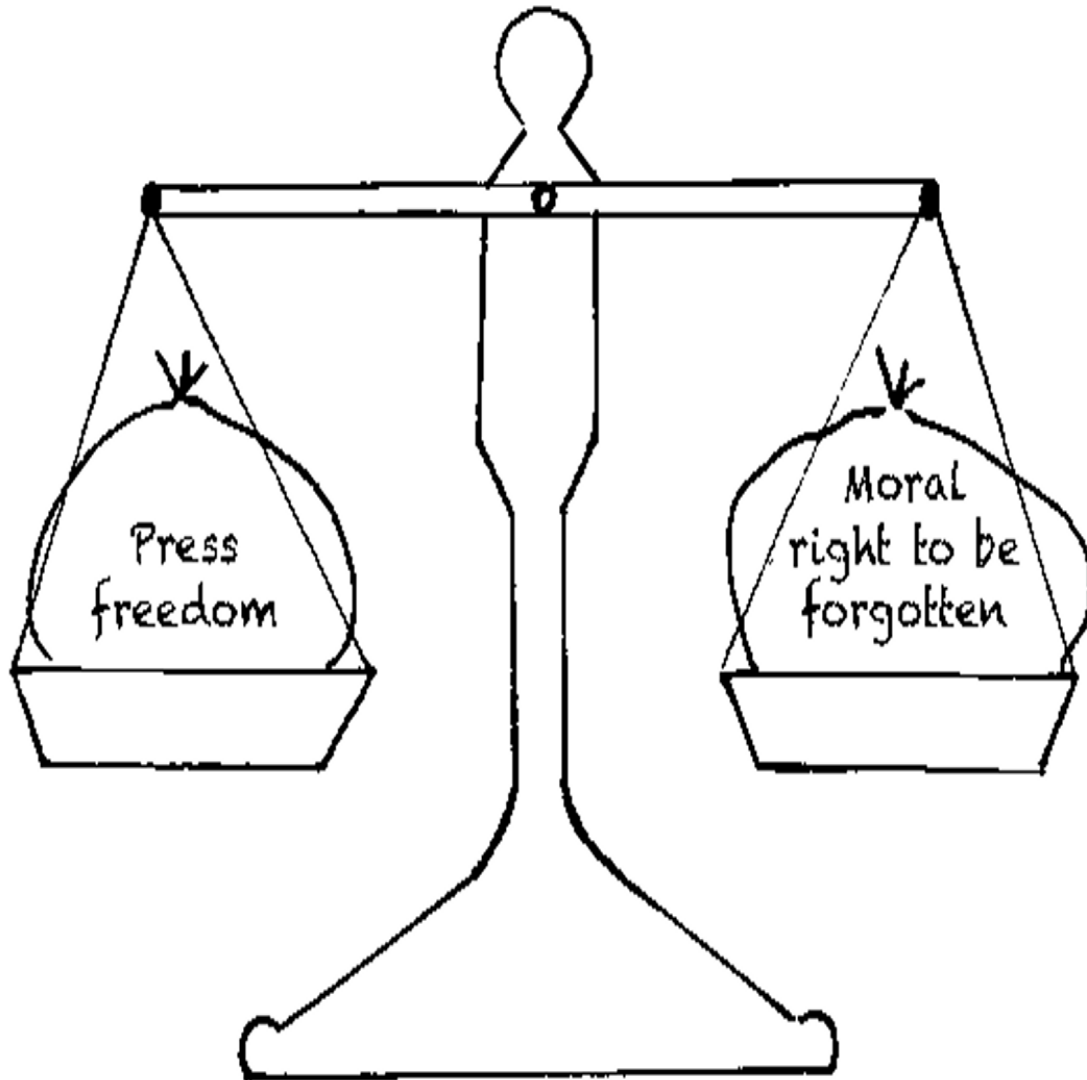


**A MORAL RIGHT TO BE FORGOTTEN IN JOURNALISM: A
BALANCING ACT OF NORMATIVE RIGHTS**



Luc van de Zand (6681247)

Thesis, MA Applied Ethics, University of Utrecht

Supervisor: Martin Blaakman

June 2020

This page is intentionally left blank

Abstract

Balancing the normative values of respect for privacy and press freedom have been a matter of debate for a while now. However, the growing acknowledgement that a right to privacy is an important value has sparked debates about the extent to which no longer relevant personal information should be accessible online. This thought has led to the implementation of a European right to be forgotten. However, journalistic organizations are not subject to this right, as it is commonly reasoned that what they produce, is of public interest. In this thesis, I will partly disagree on this line of reasoning, by arguing that news organizations should, in some cases, respect a moral right to be forgotten in journalism. This moral right would enable some individuals to get a grip about their online reputation perpetuated in journalistic productions. As interest in the news (subject) can decrease over time, the public importance of some publications might no longer be in a justifiable relation with the individual harm that it causes. In other cases, news organizations should respect a moral right to be forgotten to allow individuals to leave past transgressions behind them and start over with a clean slate. Although press freedom and its core incentives -being societies watchdog- ought to be protected, a moral right to be forgotten in journalism that in some cases allows individuals to become no longer traceable to a particular article should be established as it is not likely to affect the holy press freedom. Journalistic organizations that are strongly committed to ethical standards should, therefore, re-evaluate the intrusion in one's private life versus the importance of the production, when an individual requests so. They should opt for a self-regulatory framework on this matter as they possess the capacities to assess what information is in the public's right to know. In this thesis, I thus will try to balance the right to privacy with the right to a free press, by arguing for a self-regulatory framework that defines which information ought to be protected from a moral right to be forgotten and under which circumstances news organizations should be more inclined to grant an unublishing request.

Table of contents

Introduction	4
Section 1: the legal right to be forgotten	7
Section 2: the case for a moral right to be forgotten in journalism	9
Section 3: challenging potential objections against a moral right to be forgotten in journalism	13
Section 4: news content that ought to be protected from a moral right to be forgotten	19
Section 5: when privacy rights are more likely to trump press freedom	22
Section 6: the unpublishing framework	25
Section 7: opting for a self-regulatory framework of unpublishing requests	27
Conclusion	30
References	32

Introduction

In pre-digitalized times, forgetting was the default and remembering the exception. However, digitalization has turned things around. Never was the access to information so easy. News subjects now face a permanent online repository which can be experienced as burdensome. To illustrate: In 1994, a horrific accident happened. A well-respected Belgium doctor caused a drunk-driving accident in which two people died. The doctor was sent to jail and newspaper Le Soir had published an article about the accident in its printed paper that contained the full name of the doctor. However, in 2008, Le Soir started to digitalize all their offline articles by creating an online archive of all its productions. After the doctor's time in prison, he thus faced a second punishment: whenever the doctor's name was googled, the horrific accident appeared in the top search results. The doctor filed a complaint to newspaper Le Soir: he wanted to be anonymized from the article that referred to the accident. According to the doctor, the upholding of the article caused disproportional harm and happened such a long time ago. Le Soir, on the contrary, refused to take down the article by appealing to their right of being a free press. The doctors' right to privacy and fair rehabilitation were thus colliding with the freedom of the press.

Privacy rights and press freedom have been on a collision course for a while, but the digitalized world has created a more significant grey zone. Is it reasonably justifiable that the doctor's mistake is open to public scrutiny many years after the accident? Or should the free press re-evaluate the public relevance of the article nowadays, versus the individual harm of the doctor?

The current legal framework says 'no': journalistic organizations¹ are exempt from the legal right to be forgotten that came into force within the European Union on May 2014. This legal right shall respond to growing privacy-concerns by enabling individuals to self-manage irrelevant information about them online. Individuals can file a request by asking the data administrator to either remove or anonymize irrelevant data. But, as commonly reasoned, information published for journalistic purposes is of interest to the public. Therefore, journalistic organizations are legally exempt from the right to be forgotten.

However, the effects of digitalized news archives are more significant than ever before. Online news organizations and search engines like Google accommodate a very accessible, easily searchable, and almost permanent repository of everything that is ever published. To

¹ When I mention 'journalistic organizations' I mean well-respected institutions that investigate and cover news responsibly, on a regular basis. To vary in vocabulary, I will also use 'news organizations' or news 'outlets' to refer to this as well.

some people, this development is splendid. It enables them to have an instant online overview of a potential job candidate or a person of interest. On the contrary, to those who are not yet satisfied with their online image dispersed in journalistic productions, this development can be burdensome for someone's private or professional life. From clumsy statements in a student newspaper to a committed a crime; humans can have said or done things a long time ago, that are no longer representative to the person they are today. Is the individual harm that the upholding of a journalistic production causes, still in a proper relationship with its relevance for the public? Sometimes, this might not be the case. While individuals keep appealing to privacy rights, news organizations make a plea about their press freedom, which results in a clash of normative rights.

The example of the doctor seems to illustrate a broader desire to be forgotten online. News outlets report an increase in requests from individuals who ask for the removal, anonymization, or correction of personal information in a journalistic production (Santín, 2017, p. 304). Besides that, several national councils for journalism, notice an increase in the number of complaints about ungranted unpublishing requests from individuals². Moreover, they also admit that there are no guidelines yet for a consistent and justifiable evaluation of unpublishing requests (Edmonds & Poynter, 2016, as cited in McNealy & Alexander, 2017, p. 389).

Despite the legal exemption, news organizations thus face unpublishing requests from individuals with similar motives as that of the legal right to be forgotten. The right to be forgotten, therefore seems to go beyond a codified law.

The primary question that this thesis will address is therefore: how should a moral right to be forgotten be balanced with the right to a free press? I will highlight the clash between the right to privacy of individuals and the right of the media to publish whatever they want. I will do this by focusing on the arguments and counterarguments that can be made about a moral right to be forgotten in journalism. Eventually, I argue that news organizations should respect a moral right to be forgotten. Hereafter, I will investigate how a consistent and justifiable manner of evaluating unpublishing requests based on the moral right to be forgotten, should be done.

To do this, I will make use of different sections in this thesis. In the first section, I will elaborate on the legal right to be forgotten, to discover its roots and incentives. In the second section, I will argue for a moral right to be forgotten in journalism. Hereafter, in the third section, I will show how the arguments against a moral right to be forgotten, can be overcome

² an 'unpublishing request' is a request from an individual to anonymize, alter or remove personal information dispersed in journalistic content.

and will not affect the core incentives of having a free press. In the fourth section, I will show what information is of the public interest and, therefore, ought to be protected. In the fifth section, I will specify on the other side of the spectrum which categories have more substantial reasons to appeal to a moral right to be forgotten. In section six, it all comes together in an unpublishing framework that news organizations could use³. In the last section, I will explain why news organizations should opt for a self-regulatory framework by arguing against current conduct.

³ An unpublishing framework helps news organizations to come to a consistent and justifiable manner of evaluating unpublishing requests based on a moral right to be forgotten in journalism.

Section 1: the legal right to be forgotten

The discussion about implementing a right to be forgotten in the European Union started with the case of Mr. Mario Costeja Gonzalez. He sought the removal or alteration of two articles in the Spanish newspaper La Vanguardia, one of the most prominent newspapers in Spain. These two articles, published in 1999, referred to the auction of Costeja's apartment that was necessary to repay his social security debts. Roughly nine years later, La Vanguardia digitalized its offline news archive, including the two articles about Costeja's social security debts. Consequently, people who googled Mr. Mario Costeja Gonzalez's name, instantly had access to Costeja's financial position (Fomperosa Rivero, 2017, p. 5). Costeja not only sought the removal or alteration in the articles by La Vanguardia, but he also requested Google to delink his name from the search results of the articles by La Vanguardia. He argued that the forced sale of his apartment was no longer of any relevance since it happened a long time ago.

In the first instance, both Google and La Vanguardia rejected Mr. Costeja's request, which made him file a complaint at the Spanish Data Protection Agency (AEPD). The AEPD decided that the charge against La Vanguardia was to be rejected. However, the AEPD upheld the complaint against Google. Hereafter, the case was brought to The National High Court of Spain, which sought a preliminary ruling of the European Court of Justice (ECJ) on interpreting the Data Protection Directive of 1995. The ECJ groundbreakingly ruled that Google is a 'controller' of personal data and that search results potentially affect fundamental rights to privacy (Shapiro & Rogers, 2016, p. 1104). Because of this ruling, Google had to delist the articles that referred to the auction of Costeja's real estate. Although La Vanguardia was not affected by the decision of the ECJ, a right to be forgotten was acknowledged and later codified in Article 17 of the General Data Protection Regulation in the following way:

“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” (Art. 17 GDPR, 2017).

To specify, Mr. Mario Costeja Gonzalez is, in this case, the 'data subject' and Google the 'controller'. European citizens - or data subjects - can exercise this right to be forgotten by filing a request to a specific data processor, by asking them to remove links with personal information that is inaccurate, inadequate, irrelevant, no longer relevant, or excessive (European Commission, n.d.).

The right to be forgotten emerged as recognition of someone's desire to control

information about them online (Shapiro & Rogers, 2016, p. 1103). It enables people to move forward despite previous mistakes or socially unaccepted activities (Garcia-Murillo & MacInnes, 2018, p. 233). It implies that people should keep some degree of control about their online reputation. The cause seems well-grounded: individuals can suffer from a negative online image in both their professional and private life⁴. If potential dates, employers, or the plain curious execute an online screening, they might judge an individual based on outdated information (Edmonds, 2016, para. 2). Anyhow, the right to be forgotten and terminology like 'inadequate', 'irrelevant', 'no longer relevant' and 'excessive' indicate that there is an expiration date on online information. After the personal data is expired, it makes little sense to keep it online if that information is deemed harmful to the particular individual. To prevent individual harm, we are supposed to 'forget' this data⁵.

However, according to Article 85 of the General Data Protection Regulation, the right to be forgotten does not apply to all information online. Journalistic organizations are, in principle, exempt from the legal right to be forgotten:

“For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information” (Vollmer & European Union, 2018).

Indeed, news organizations are not legally obliged to deal with unpublishing requests. Consequently, in the case of Mr. Mario Costeja Gonzalez, newspaper La Vanguardia came off unscathed. The ruling of the European Court of Justice applied to Google. But is it reasonably justified that news organizations are always exempt from such a right to be forgotten? Or should news organizations, despite being exempt from the legal right, respect a moral right to be forgotten?

⁴ Ironically, because of the groundbreaking feature of the ruling by the ECJ, in which Mr. Costeja tried to camouflage information about his social security debts, he became known internationally. Often, such a phenomenon is referred to as the 'Streisand' effect. Any attempt to hide, remove or censor a piece of information has the unintended consequence of publicizing the information more widely, usually facilitated by the internet (Xue, Magno, Cunha, Almeida, & Ross, 2016, p. 397). Costeja thus suffered from the Streisand effect. Hopefully, he can find comfort in the fact that he enabled individuals to restore their online image, and at least prevent some other individual harm.

⁵ Admitting, the official term of this legal right in the GDPR is not 'the right to be forgotten', but the 'right to erasure'. Since both scientific scholars and media use the terminology of 'forgetting', I will use the jargon of the right to be forgotten.

Section 2: the case for a moral right to be forgotten in journalism

Although journalistic organizations are exempt from the legal right to be forgotten, in this section, I will argue that journalistic organizations should respect a moral right to be forgotten. A moral right to be forgotten in journalism would allow individuals to file an unpublishing request by asking news organizations to either remove or anonymize personal information presented in journalistic content. To clarify, I will not argue that journalistic organizations should be subject to the legal right to be forgotten as codified in the General Data Protection Regulation. Instead, I will argue that media should - in some cases - respect a moral right to be forgotten, for two reasons. First, I will argue that the goal of the production might no longer be in a justifiable relation with the individual harm that it causes, due to the time that has passed. Second, I will argue that in some cases, media should grant individuals a second chance despite previous mistakes.

Since the digitalization of news archives, the impact of journalism is greater than ever before. The internet provides a highly accessible, easily searchable, and nearly permanent repository of everything ever published (English & Associated Press Managing Editors, 2009, p. 1). Currently, if journalists mention an individual in one of their productions, the content will remain online. In some cases, this can be burdensome to individuals. Published content can be unforeseeably invasive in someone's private life. Individuals that did not seek any media attention can become news subjects in the blink of an eye, with long-term consequences. It is thus crucial for journalists to make careful considerations about the importance of their reporting versus the extent to which they intrude in someone's private life.

The driving force behind these arguments in favour of a moral right to be forgotten is the increasing societal capacity to remember, which threatens to diminish any right to privacy (Rusu, 2015, p. 384). The expanding ability to remember - which is facilitated by the internet - has the potential of limiting human flourishing. The fear of being burdened for life - when colouring outside the lines - is constraining people to be(come) their authentic selves (Katell & Moore, 2015, p. 2). Undesirably, any potential invasion of privacy by the press can affect other core liberal freedoms. The freedom of movement or speech could be affected since humans are less likely to engage in socially unaccepted practices out of fear for an everlasting online stigma. A moral right to be forgotten in journalism could help to protect these freedoms.

The importance of allowing some individuals to get more control over their online reputation dispersed in journalistic content is mainly based upon the respect for one's privacy rights. Many formulations and interpretations exist about how to respect a right to privacy. For

example, privacy can be defined as the right of an individual to determine what information about himself or herself should be known to others (Westin, 2003, p. 431). This conceptualization is most in line with the incentive that has led to implementing a legal right to be forgotten. Privacy is essential to the development and maintenance of an autonomous self and should include some control over some information about us, by gaining some power over who can experience us (Kupfer, 1987, pp. 81-82). But to what extent should we have ‘some’ control? Although this remains to some extent ambiguous, consider the following perception: individuals should have control over information which is not – according to a reasonable person under normal circumstances – a legitimate concern of others (Decew, 1997, p 58). Following this line of thought, privacy rights become less important whenever the information becomes publicly relevant. This line of reasoning is most suitable for implementing a moral right to be forgotten in journalism, as it also protects information that is relevant for the public to know. Although we do not know how Decew would respond to an interpretation of his conceptualization of privacy right, I would like to add that one should be able to regain his or her privacy rights whenever the information online is no longer a legitimate concern of others.

In many codes of ethics about conducting responsible journalism, careful considerations about the goal of the production versus one’s privacy rights are already an accepted part of proper journalism in the pre-publication phase (McNealy & Alexander, 2017, p. 391). Although these professional codes of conduct are not binding, they provide guidance to journalists about how to give information to the public responsibly. Whether it is about publishing a name, photo, or other sensitive information: considerations in the pre-publication phase are made about to what extent the intrusion on someone’s private life is in a justifiable relation with the goal of the journalistic production. So, one could argue that we do not need a moral right to be forgotten in journalism because it is already carefully produced.

However, firstly, I argue that news - and interests in a news subject - is contingent and temporary. An invasion in someone's private life might have been justifiable at times of the publication. But, this does not mean that the importance of the journalistic production is still in a legitimate relationship with the intrusion in one's private life right now, or in the future. A journalistic report of eight years ago can be a factual representation of what has happened, but it does not mean that this information is still equally relevant to the public. Therefore, journalistic organizations need to accept that not all truthful journalistic productions have current relevance (Shapiro and Rogers, 2016, p. 1108).

The contingent characteristic of news shows that the relevance of a factual journalistic production can decrease over time, while the intrusion in one’s private life remains invasive.

Knowing this, a reassessment of the relation between the goal of the journalistic production and the intrusion in someone's private life should be part of conducting responsible journalism, when an individual requests the anonymization or removal of personal information dispersed in journalistic content. Moreover, since considerations about this relation are already part of conducting responsible journalism in a pre-publication phase, there is no obvious reason left to exempt from re-evaluation when this relation is potentially imbalanced (Shapiro & Rogers, 2016, p. 1109).

So far, in this first argument, I have claimed that the relevance of a journalistic production can decrease. However, this would only be a problem if the journalistic production is causing individual harm to a news subject as well. In making this plea for a moral right to be forgotten in journalism, it must be noted that individuals can only file an unpublishing request if the journalistic content is harming them in their private or professional life. To show how a truthful journalistic production with low relevance can cause harm, consider the following example. Imagine the anonymized X, who asked for unpublishing measures of an article published eight years ago⁶. The news article named X as a victim of a financial embezzlement case. However, X recently launched a new business and perceived the journalistic publication as potentially damaging to his image as a businessman. X feared that he could lose potential clients when they google X's name. Although one could say X now represents the voice of the gloom and doom, the upholding of the online production will probably not help him in successfully setting up his business. Presumably, individual harm can be minimized if X will be anonymized in the journalistic production. So, one could raise question marks over the function of X his name in the article. Is X his name in the journalistic production still of relevance to the public? If individual harm could be reduced without damaging the journalistic report, a news organization should have solid reasons not to do so. This example shows, how the upholding of X his name in the journalistic production can be burdensome to X, as it affects a variety of personal and professional relations (Rachels, 1975, p. 326).

Through the lens of reducing harm by respecting one's privacy, there is one other reason to adopt a moral right to be forgotten in journalism. So, as a second argument for why news organizations should respect a moral right to be forgotten, I would like to bring forward that an individual should not be reduced to his or her past mistakes (Brock, 2016, p.91). So, in some cases, media should respect an appeal to a moral right to be forgotten to give people a chance to start over. Although X, the businessman, also wants a chance to start over, this argument is

⁶. Due to the possibility of the Streisand effect, I chose to anonymize X, and not reference its source.

designed for those who have engaged in generally unaccepted practices but want to restart their life with a clean slate.

The line of reasoning used to allow individuals to start over despite previous mistakes, is closely related to the French right 'le Droit à l'Oubli', better known as a right to oblivion. It enables criminals to move on whenever they served their judicial sentences. Although the French legal right is only mentioning criminals, there must be a broader spectrum of individuals that have done something that is reported in the news, of which they think that it is no longer in line with the human being they are today. Humans can change, and so can their opinions or views on society. Being burdened by an outdated opinion or incident should not be a sentence for life. Therefore, society must offer one the opportunity to restart without bearing the weight of past errors (Brock, 2016, p. 91). To give some people a chance to leave past transgressions behind them, the virtue of forgiveness is crucial. Forgiving individuals means that we relieve individuals from past burdens due to moral failures (Satne, 2020, p. 1). For news organizations, this would mean adopting a sense of forgiveness, which can be put to by respecting a moral right to be forgotten.

But how long is a journalistic production of relevance for the public? And if it has a decreased level of relevance, does it still outweigh the privacy violations whenever sufficient time has passed? No consistent numerical answer seems to exist on the first question as it is heavily dependent on case specifics. A news production of twenty years ago can still have relevance for the public (e.g. if it relates to the misconduct of a current politician), whereas an article about the outdated opinion of John Q. Public might lose its relevance sooner.

Anyhow it becomes clear that in some cases, the negative consequences of an invasion in one's private life can become disproportional to the relevance of the journalistic production when sufficient time has passed. Besides that, in some cases, we should allow individuals to start over despite previous mistakes. Therefore, news organizations should not ignore a moral right to be forgotten in journalism. Journalistic organizations should opt for self-regulation on this matter, by making clear policies on what information constitutes as information that is of the public interest.

Section 3: challenging potential objections against a moral right to be forgotten in journalism

In the previous section, we have seen why news organizations should, in some cases, respect a moral right to be forgotten. In this section, I will clarify and challenge potential objections against adopting a moral right to be forgotten in journalism.

It is worth mentioning, that although safeguarding privacy rights and thereby preventing individual harm sounds great at first glance, some see the enrollment of a right to be forgotten as undesirable. Garcia-Murillo and MacInnes, for example, argue that society needs to accept individual harm, to promote a forgiving society. A culture in which we unpublish information that is experienced as harmful perpetuates the belief that everybody should be perfect (Garcia-Murillo & MacInnes, 2018, p. 230). Although these authors agree on the goal of the right to be forgotten – to give people a chance to start over despite previous mistakes or socially unaccepted activities – they think we need to look at a macro-societal approach. According to them, recognizing a 'forgiving' society will allow for an easier and more realistic existence, in which it will be easier to learn from the imperfections of others and become more productive members of society (Garcia-Murillo & MacInnes, 2018, p. 236).

Garcia-Murillo and MacInnes have thus made a meta-ethical observation that promoting this unforgivable societal trend is not desirable. Such a theory would be interpreted as an ideal theory, that is necessary to guide non-ideal methods that can be implementable in the actual world. Ideal theories often have a utopian character: compliance with such a theory would mean something like living in the best society. Non-ideal theory, on the contrary, is a more realistic approach which takes the feasibility of method into account (Valentini, 2012, p. 654).

Although presumably many people would want to live in a forgiving world, it will probably not be the case any time soon, as long as there will not be a cultural switch in this neoliberal and individualistic society. People can suffer from a harmful or damaging journalistic report in their private and professional lives and want a chance to start with a clean slate. Individuals should not bear the brunt for a slow transition into a more forgiving society, I argue. Hence, I am not claiming that a more forgiving society is undesirable. Instead, I claim that individuals should have some control in deciding with whom they share their past mistakes. In a self-servant and profit-oriented society, some people need to protect their online image to make a living. Because of these complex characteristics and multiple stakeholders, arguing for an ideal theory would be too idealistic. Therefore, it might be more pragmatic to look into a non-ideal, but a sustainable way to cope with a moral right to be forgotten in journalism, which

weighs the interests of the press and individuals involved.

Commonly understood by media, a moral right to be forgotten in journalism would mean a direct attack on press freedom. Any measure that in some way limits or constrains the press (e.g. an unpublishing framework) could be viewed as something that restricts their freedom. Press freedom can be defined as the absence of third parties that restrain journalist in their publication process (Smith, 1990, p.4). It suggests that the press should be granted special status because of its importance for a healthy democracy. Journalists can only enhance public reasoning if they can do their job freely, without interference from anything or anyone. Journalists could then combat secret politics and abuse of power (Dawes, 2013, p. 21). Press freedom is thus an instrumental good that acts in the public interest and reinforces democratic ideals (Petley, 2012, p. 537). In this fashion, the freedom of the press is viewed as a means to an end: we need a free press to sustain a democratic order (Craft & Meyers, 2010, ch. 3, p. 2.) The job of journalists is to present the truth. Communicating these truths to the public is an important condition for a healthy democracy: ‘‘No democracy is complete without access to transparent and reliable information. Journalism is the cornerstone for building fair and impartial institutions, holding leaders accountable and speaking truth to power’’, secretary-general of the United Nations, Ant3nio Guterres, famously said (United Nations, 2019). This quote is closely related to Article 11 of the Charter of Fundamental Rights of the European Union: we should respect pluralistic media. In a democratic society, it is of significant importance that the media themselves decide what news is fit to print.

Press freedom is within media seen as holy, which cannot be interfered with. Any attempt to limit this freedom, for example by implementing an unpublishing framework, could be seen as a direct attack on the freedom of the media. Often, the freedom of the press is equated to a core liberal value: freedom of speech. Although freedom of the press and freedom of speech are often equated, they differ intrinsically. The latter refers to individuals and their unrestricted freedom of expression, which would stimulate authenticity. Press freedom, on the other hand, refers to well-respected journalistic institutions to cover research information freely. What they do have in common is the underlying importance of a value that protects us from limiting our freedoms. Society could benefit from pluralistic ideas, which can be publicly tested and improved, with the results available for all (Wells, 2013, para. 2). The same argument can be made for newspapers: a free and pluralistic press should be defended to challenge our leaders, systems, and ideas about society.

However, this traditional conceptualization of press freedom, and its importance to combat secret politics or abuse of power, might be too old-fashioned. Profit-driven journalistic

organizations also function as an entertainment industry, in which the newsworthiness of something is more likely to be determined by its level of sensation, than controlling public officials. Moreover, blurring boundaries occur about what is a journalistic organization and what not since everyone can publish anything on the internet and call it journalism. Hence, I am not undermining the importance of a free press here. Rather, I claim that the underlying values that support it – being society’s watchdog by combatting secret politics and holding public officials to account - are not likely to be affected when media opt for the self-regulation of an unpublishing framework. So, the reduction of this problem to an attack on press freedom might be oversimplifying the real issue at stake here. Therefore, I will now clarify and challenge three pragmatic arguments that can be made on behalf of the press against a moral right to be forgotten in journalism.

Firstly, not modifying journalistic content is supported by the idea that information in its original form ought to be protected for the sake of historical integrity (Shapiro & Rogers, 2016, p. 1107). In an era where the internet is causing an eternity effect on information, remembering becomes natural, and forgetting becomes exceptional (Pereira, 2014, p. 5). It is an archivists’ job to protect the integrity of archival material and thus guarantee that it continues to be reliable evidence of the past (International Council on Archives, 1996). Truthful archives could provide evidence or even a justification for past actions and current decisions. Someone who values full and trustworthy archives would say that unpublishing information out of a journalistic production would jeopardize historical integrity. Though Shapiro and Rogers only mention the importance of historical integrity, trustworthy archives could also be of importance for both scientific and statistical reasons, I argue. The terminology of 'historical integrity' seems to imply that only happenings with historical value are useful for archives. If Mr. Costeja Gonzalez's efforts to unpublish information did not have the groundbreaking character of causing a legal right to be forgotten, he might have questioned to what extent his social security debts are of worth to the collective memory. However, if such information is to be unpublished on a broader scale, future scholars would be less likely to reveal issues or trends from the past (Shapiro & Rogers, 1107).

Although I value reliable and trustworthy archives, I question to what extent all journalistic productions in its original form have an equal value to archives for the sake of historical, statistical, or scientific integrity. To me, the removal of a truthful journalistic article based on privacy rights should only be done in very exceptional circumstances (e.g. when the upholding of a journalistic production causes a direct threat to the requestor). However, in most cases, a reasonable middle ground can be found in which individual harm is reduced and privacy

rights are respected, while also maintaining its value for archives. Moreover, it should be considered that holding archives is a secondary role of the press (Pereira, 2014, p. 92). Again, the foremost function of the press – being a watchdog – is not likely to be affected when, in some cases, individual harm overrides freedom of the press. Nevertheless, an informed decision should be made about the potential consequences of an unpublishing framework of journalistic productions for archives. In making this decision, we should distinguish between the mere availability of information and it being instantly findable (Shapiro & Rogers, 2016, p 1108). The historical, scientific, and statistical value that journalistic productions have will not be affected if information becomes less visible to the public. So, on an alternative note, privacy invasions and individual harm can be reduced without interfering with the public record. When an individual makes a reasonable unpublishing request, the original journalistic report can be sent to an archive, while a reasonable middle ground can be found about the availability of information for the public.

Secondly, enhancing journalistic ‘accountability’ could be something of interest in considering the implementation of a moral right to be forgotten (Shapiro & Rogers, 2016, p. 1107). Journalism is facing an undermining of trust from citizens over the last couple of years (Reuters Institute, Nielse, Newman, Fletcher, & Kalogeropoulos, 2019, p. 8-9). Potentially, trust in media could decrease further when an unpublishing framework is established that in some situations, allows content to be altered or anonymized. Journalists make information verifiable by sourcing their information. The use of anonymized sources is for this reason only allowed in exceptional circumstances. These sources prove the truthfulness of journalistic content to the news consumer since two parties can be held accountable for what is being said. Therefore, the information in a journalistic product is preferably easily checkable.

Indeed, news organizations should be transparent to make it possible to hold themselves accountable for what they produce. However, evaluating a particular unpublishing request does not have to result in an either-or decision⁷. If, after careful consideration, such a request is denied, no content will be less checkable. If privacy interests trump the freedom of the press, a reasonable solution should be found to overcome harm or privacy violations, while ensuring that the correction will not affect the checkability of the production.

Thirdly, it might be pragmatic to consider the economic interests of news organizations.

⁷ I admit that terminology like 'the moral right to be forgotten' and 'unpublishing requests' insinuate that adopting a moral right to be forgotten will result in an either/or discussion. The used terminology by legislators, scholars and media is thus to some extent, misleading. Nuance in this debate is of essential importance. Therefore, refined vocabulary might be interesting for future research.

In the way democracy has dealt with journalism so far, most organizations are themselves responsible for keeping their business running. Although some journalistic organizations can rely on state funding, most of them are commercial entities. The re-evaluation of potential inadequate or no longer relevant content is a time-consuming mission for journalistic organizations. Journalistic entities have been financially struggling over the last couple of years, partly because of the rise of the internet, in which information became instantly findable on many platforms (Rantanen, Jääskeläinen, Bath, Stupart, & Kelly, 2019, pp. 6–8). For a proper evaluation of a particular unpublishing request, time is needed. Spending time on this re-evaluation can be burdensome to news organizations since no financial return on investment can be achieved by the re-evaluation of such requests. Also, if this trend of filing unpublishing requests continues, and more applications are to be granted by news organizations, it can have serious consequences for the newsrooms' online archive. The value of an archive decreases whenever more information is removed (Blanken, 2007, 'De integriteit van archieven' section, para. 4).

Often such an economic argument is taboo in arguing against a moral right. However, to promote the feasibility of a moral right to be forgotten in journalism, it is pragmatic to take this potential critique into account. Hence, I do not want to claim that the economic interest should be of great influence in deciding about a moral right to be forgotten in journalism. Rather, I want to claim that at least this economic interest should be kept in mind when making such a decision. No easy solution exists for this problem if a moral right to be forgotten in journalism is adopted. However, more on an alternative route, there is something that journalists can do to prevent a further increase of unpublishing requests. Out of an evaluation of the complaints about ungranted unpublishing requests from the Dutch Council for Journalism⁸, it became clear that in four of the eight evaluated cases, the news subjects had withdrawn their original consent to participate in the journalistic production. So initially, the news subject had no problems with cooperating with the journalist. However, after time has passed, they started to regret their cooperation. Therefore, it might be interesting to stimulate real consent and prevent 'source remorse' (Ethics Advisory Committee of the Canadian Association of Journalists, 2014, p. 3). This term refers to individuals that in the first instance, have consented to be a source in a particular journalistic production. However, after time has passed, they regret their cooperation because the upholding of the production is harming them. Opening up to a reporter is not an act free of risks. Poorly informed individuals that did not foresee the impact

⁸ An internship at the Dutch Council for Journalism allowed me to analyze complaints from individuals about ungranted unpublishing requests. See 'References' for the full citation.

of the news story about them online might be more likely to file an unpublishing request. Often, this concept of making informed choices is referred to as informed consent. In practice, this would mean that journalists should take a more active role in determining whether or not the source has understood the consequences of them participating in the production. Imaginably, if people make more informed choices about whether or not to cooperate with a journalistic production, their hunger to restore their online image should be reduced.

To resume, in this section, we have seen that the core incentives of having a free press will not be affected if a moral right to be forgotten is adopted. Moreover, potential counterarguments like protecting historical integrity, promoting accountability and preventing an economic burden for news organizations can be overcome. This means that there is no obvious reason to ignore a moral right to be forgotten in journalism.

Section 4: news content that ought to be protected from a moral right to be forgotten

In the previous section, we have seen that protecting a free press is an essential condition for a healthy democracy. However, we have also noticed that arguments of the press to reject a moral right to be forgotten should not be seen as an attack on press freedom. In this section, I will investigate what information ought to be protected from a moral right to be forgotten in journalism, to safeguard a free press and healthy democracy. Or, to use Decew's terminology, what information is – according to a reasonable person - a legitimate concern of others (Decew, 1997, p. 58).

As mentioned before, the job of journalists is to present the truth. However, in times where media productions are archived online, there is a distinction to be made between truthfulness and relevance. What constitutes as publicly relevant, instead of just truthful? When does the public have a right to know? Which information ought to be protected to inform the public?

Often, journalists use the public right to know to justify an intrusion in someone's private life. It provides a greater good defence: journalists intrude in someone's private life because the public has a legitimate interest in that information (Meyers, 1993, p. 133). However, to say that all content produced by journalistic organizations is of public interest would be too simplistic. Some journalistic productions can be outdated and no longer relevant because they were published many years ago. In other cases, it is not necessarily the public's right to know, but a public's interest in knowing, which is an important distinction. A public's interest in knowing is in some cases based on sensational factors, which should not be viewed as a 'legitimate interest' that justifies violating privacy rights.

Current relevance – or newsworthiness – is thus of importance in evaluating an unpublishing request. Newsworthiness from a professional journalistic perspective is defined as the force that affects whether a journalistic organization will share the information: the more newsworthy, the greater the chances are that the media will publish it (Shoemaker, Eichholz, Kim, & Wrigley, 2001, p. 234). The same could apply for unpublishing requests: as newsworthiness increases, the balance shifts in favour of rejecting an unpublishing request. Whereas if newsworthiness decreases, the balance shifts in favour of granting an unpublishing request (McNealy & Alexander, 2017, p. 400). Now, we end up with the question of what constitutes as newsworthy. According to Dendy's 'California Approach' to newsworthiness, it should be viewed as 'the social value of the information, the extent of the intrusion into public areas, and the extent to which the complaining party has voluntarily placed himself/herself in

the public eye' (Dendy, 1996, p. 163). Although creating boundaries for what is newsworthy means operating on thin ice, I will use this approach to define what is in the public's right to know, and therefore ought to be protected. Taking the foremost function of the press –being societies watchdog – Dendy's approach to newsworthiness seems reasonable, for two reasons. First, because it stretches the importance of the social value of some information that is available in journalistic content. I argue that something has social value if the information is a product of the core function of journalists: being societies watchdog. If the information relates to this core function, it has democratic value. In this fashion, people with power cannot appeal to a moral right to be forgotten as their past actions or characters directly affect the lives and well-being of citizens (Meyer, 1993, p. 141).

Second, because it explicitly mentions people who 'voluntarily' placed themselves in the public eye. By choosing to become a public figure, by, for example, going into politics, people surrender to a certain intrusion in their private lives (Meyer, 1993, p. 141). Hence, I am not claiming that people who voluntarily placed themselves in the public eye have no privacy rights at all. However, if their conduct demonstrably affects their public performance, they ought to accept that it exposes them to more media attention. To come back to the issue, this would mean being more inclined to reject the unpublishing request of a person who deliberately chose to become part of the public eye.

To illustrate what consequences this interpretation has on our moral duty to respect a moral right to be forgotten in journalism, consider the following example. Just recently, an American woman let her dog out on an early morning in New York City. The dog was not on a leash, to the chagrin of a person of colour that was watching birds. The unleashed dog could scare away the birds, he told her. Unexpectedly, the woman replied furiously and called 911. In this phone call, the woman gratuitously said she was threatened with her life by an Afro-American man in the park (New York Times, 2020). Clearly, the woman was abusing the amoral stigma of black people in the United States of America. The birdwatcher, who only asked the woman to put her dog on the leash, videotaped it all and soon the incident went viral on the internet. Twenty-four hours later, the woman was named in news articles across the whole world and fired by her employer. This walk on an idle Monday morning destroyed her life, as she claimed afterwards. A striking event, which has journalistic relevance because it shows how racism in the U.S. is an everyday issue. However, most likely, after sufficient time has passed, the woman would appeal to a moral right to be forgotten, and request to be anonymized in the journalistic production referring to the event. In this evaluation, the question must be asked; is the newsworthiness still outweighing the woman's privacy rights?

This might be a somewhat controversial example, as some could argue that we should go beyond generally accepted practices to combat racism. Anyhow, my answer to this question might be considered controversial as well. I would argue that this event is still newsworthy as it shows that racism is -and hopefully at the time the unpublishing request is filed, has been- an everyday issue. However, I argue, it is not relevant at all what the woman's name is. She did not choose for the public eye. Although I think the birdwatcher should press legal charges against this woman, she should not face a second punishment that will impact the rest of her life. After the woman has served her judicial sentence, she should be protected from her flawed and racist judgments in the past. Any responsible journalistic organization should – on my advice – anonymize the woman. So, after sufficient time has passed, the event might be still newsworthy, while the woman that caused the event is no longer of any relevance for the public. However, this would change whenever this woman would decide to run for public office. If this was the case, the public has a right to know about her past actions, as it enables them to make more informed democratic choices.

To resume, whenever a journalistic production is newsworthy, the public has a right to know, and the information ought to be protected. Information is newsworthy whenever the information contributes to a healthier democracy (e.g. by holding public officials to account), or whenever it refers to individuals that voluntarily stepped in the public eye. Although none of these concepts are clear cut or absolute, it should stimulate news organizations to assess what information in the journalistic production has current newsworthiness.

Section 5: when privacy rights are more likely to trump press freedom

So far, I argued that news organizations should respect a moral right to be forgotten in journalism and argued that when the public relevance and the newsworthiness of an article decreases, news organizations should be more inclined to grant unpublishing requests. Besides that, it was argued that when the public has a right to know, the journalistic content ought to be protected. Still, it is essential to mention that such a decision will not be an easy one since it heavily relies on case-specific circumstances. Moreover, although my attempt to specify the public interest, it remains to some extent, ambiguous and open to multiple interpretations. Therefore, in this section, I will explain which categories should be granted with extra protection by identifying categories of cases that should have more substantial reasons to appeal to a moral right to be forgotten in journalism. In these categories of cases, privacy rights are more likely to trump the right to a free press.

First, let me come back to the doctor, who was mentioned in the introduction. He sought the anonymization of a news article that referred to him, causing a drunk-driving accident that took the lives of two individuals. It is essential to highlight that nowadays, an article relating to such a high crime, would not contain the full name of the criminal, which shows that privacy norms already have been subject to change in journalism. Most European news organizations ensure that criminals are anonymized by either making an alias of their name, or a shortened version of their name (e.g., Pete J.). The likelihood of convicted criminals to be profoundly affected after they served their judicial sentence is thus decreased anyhow. However, when the journalistic production is easily traceable to an individual who still suffers from the journalistic content online, a re-evaluation of its relevance should be done. Journalistic organizations should find a reasonable middle ground to dissolve individual harm if, and only if, the perpetrator demonstrably changed his or her life for the better and is no longer under suspicion of other criminal activities. If this is not the case, it seems to be more relevant to know about one's criminal past.

Second, I will argue that news subjects who were at the time of the creation of the article not able to give informed consent, should stand stronger in their appeal of a moral right to be forgotten. As briefly touched upon in section 3, informed consent in journalism means that news subjects genuinely know what they sign up for. An individual can only give informed consent if it has the right information, the decisional-capacities, and is free from external influences or pressure (Zalta & Stanford Encyclopedia of Philosophy, 2019, section 1, para. 2). I argue that whenever one of the three requirements of giving informed consent is contentious,

news organizations should be more inclined to grant unpublishing requests. In what follows, I will identify three categories of individuals that should be granted extra protection, as their previous consent to cooperate might not be fully informed.

As a first category that should be given additional protection, I would like to take up the cudgels for minors. In many codes of ethics on journalism, the protection of minors is already part of conducting responsible journalism. The interests of a child should always be of primary concern. When it comes to minors consenting to cooperate with a particular journalistic production, one could question to what extent it possesses the decisional capacities to give informed consent. Children might not foresee the consequences of their actions, which could lead to a permanent and undesirable online image, that could affect them for the rest of their lives. Moreover, the ‘voluntariness’ of their decision is also debatable since minors could be influenced by external influences such as pushy journalists that are struggling to meet their deadline. Because of these reasons, minors are more likely to regret their decision to cooperate with a particular journalistic production. So, when a minor could disclose why its previous consent to cooperation was flawed and uninformed, news organizations should be more inclined to grant their unpublishing request.

As a second category, I want to build the case for individuals who are in a journalistic production referred to as a victim of a relevant occurrence. Their decision to cooperate with a journalistic production could be influenced by emotions or resilience. With any public happening that causes victims, the news value is at his highest directly after the event. In some cases, victims have to decide in the heat of the moment whether they want to become part of the public record. In these cases, there is probably too little time to accurately weigh the benefits and burdens of cooperating with a journalistic production. And even if there was enough time, emotions might play a significant role in deciding whether or not to cooperate. Such an emotional decision could impact their ability to make a rational, informed choice with all the information available⁹.

As a third category, this extra level of protection should also be granted to vulnerable individuals. Although it is somewhat ambiguous and potentially stigmatizing to determine who is considered to be vulnerable, I argue in support of vulnerable individuals that should be

⁹ To illustrate, the above-mentioned victim of the financial embezzlement case, X, potentially had an impaired ability to make an informed choice to cooperate. Besides, there is another reason why victims should be granted a greater level of control. Just like X, victims generally do not choose to become part of the public eye. Instead, victims are used to describing the impact of an event, only because they were the unlucky ones that have undergone it.

protected from themselves¹⁰. Individuals might be considered vulnerable whenever they due to a disability, post-trauma, mental illness, or special characteristics that require extra protection, cannot give informed consent (Tanner, Pearson, Sykes, & Green, 2010, p. 87). So, whenever an individual could be considered 'vulnerable' at times of the publication, news organizations should be more inclined to grant their unpublishing request.

Hence, I am not claiming that all unpublishing requests should be granted whenever doubts exist about the extent to which an individual gave valid informed consent. Still, an evaluation of its current public relevance should be done. However, I claim that these categories of cases are more likely to trump the freedom of the press: they have more substantial reasons to appeal to a moral right to be forgotten in journalism.

¹⁰ On a side note, the woman who racially offended the coloured birdwatcher might be considered vulnerable. She ought to be protected whenever she files an unpublishing request as she needs to be protected from her flawed and racist judgements, which could be lumped under the heading of 'special characteristics'.

Section 6: the unpublishing framework

After determining what information is of public interest and establishing who ought to be protected, it becomes clear that there is a lot at stake. Any policy on the handling of unpublishing requests based on a moral right to be forgotten in journalism can have severe consequences for the past, present, and future work of journalists. To find a fair balance between the moral right to be forgotten in journalism and the right to a free press, nuance is of essential importance. Nuance about the possible measures that can be taken to reduce privacy violations (e.g. anonymization, removal, no longer traceable to an individual or less accessible). But also, nuance about the broad scope of incentives to gain control over an online reputation. These vary from a request to remove unnecessary personal data, to a wish for oblivion, as they no longer want to be associated with an error, mistake, or criminal activity.

But where does this leave us? How should a moral right to be forgotten be balanced with the right to a free press? Up to this point, the following framework for evaluating unpublishing requests is established. This framework should provide guidance for consistent and justifiable decision-making regarding unpublishing requests based upon a moral right to be forgotten:

News organizations should be more inclined to reject an unpublishing request based on the moral right to be forgotten if:

- 1. the information in the journalistic production contributes to the core function of journalism -being societies watchdog- by controlling those with power in order to maintain a healthy democracy*
- 2. the information in the journalistic production refers to an individual who voluntarily stepped in the public eye*

While news organizations should be more inclined to grant an unpublishing request based on the moral right to be forgotten if:

- 1. the requestor is -or was at times of publication- a minor*
- 2. the requestor is in the journalistic production referred to as a victim*
- 3. the requestor is -or was at times of publication- considered as vulnerable*
- 4. the requestor served his/her judicial sentence for a crime and demonstrably is no longer under suspicion of other criminal activities*

Imaginably, there is a broad spectrum of individuals that would like to file an unpublishing request while they are not a public figure, nor vulnerable, a minor or victim. In these cases, individuals need to demonstrate how the upholding of journalistic content is harming them. If they can do so, and news organizations condemn the upholding of personal data dispersed in journalistic content as no longer relevant, a reasonable middle ground should be found that protects the public record while dissolving privacy violations.

Section 7: opting for a self-regulatory framework

So far, I have established a more practical framework that news organizations could use to re-evaluate privacy rights with their right to a free press. I will use this section to argue that news organizations should be the executor of this moral right to be forgotten in journalism.

Although this seems obvious, it is not yet the case. As stated before, many news organizations have no form on their website where one can file an unpublishing request (Edmonds & Poynter, 2016, as cited in McNealy & Alexander, 2017, p. 389). Besides that, there seems to be a more effective manner to try to restore one's online image in journalistic productions. With the implementation of the legal right to be forgotten, as mentioned in section 1, Google is by the European Court of Justice identified as a 'data controller'. This enables individuals to file an unpublishing request of all the data accessible via Google. Overall, they consider submitting an unpublishing request at a search engine like Google to be more effective to restore someone's online image. Potential employers are more likely to Google the name of a potential job candidate, since using the search engine of a particular news organization would lead to fewer results.

Google's last transparency report on implementing the right to be forgotten, which dates from February 2018, shows that since May 2014, 2.4 million people requested URL's to be removed because the content was harming them in some way. 43% of these requests have been granted by Google (Smith & Google, 2018). Not all of these requests referred to the delisting of journalistic productions. However, the report shows that 18% of all requests referred to the delisting of news articles (Smith & Google, 2018). No exact numbers exist about the extent to which Google has granted unpublishing requests of journalistic productions, but several news outlets report that some of their articles are delisted by Google (Oghia & Centre for International Media Assistance, 2018). And the responses of journalistic organizations about Google's delisting have not been mild. Various journalistic organizations have published articles with headlines like; 'Google decided that you are not supposed to read these articles' (van Riessen & Quote, 2020), 'Read the BBC stories purged from Google over 'right to be forgotten'' (McIntosh & BBC, 2015) and 'EU's right to be forgotten: Guardian articles have been hidden by Google (Ball & The Guardian, 2017).

It is essential to mention that Google does not remove journalistic productions. Instead, Google eliminates the search results of content based on queries for an individual's name (Floridi et al., 2015, p. 4). This way, the article will not go offline. Instead, it becomes no longer instantly findable. So, if Google grants the request of the non-existing John Williams, who

during a festival ten years ago openly talked with a reporter about his drug use, Google would not show the news production with a query relating to [John Williams]. However, the article would appear in the search results with a query like [festival drug use]. Up to this point, there is only one data-driven study that examined the content of delisted journalistic productions by Google. This study found, based on an examination of 283 delisted links with sources like the BBC, The Telegraph, The Daily Mail, and The Guardian, that most of the delisted content referred to highly sensitive topics (Xue et al., 2016, p. 393). To specify, journalistic productions have been delisted that make references to sexual assaults, murder, financial misconduct, pedophilia, terrorism, road accidents, drunk driving, or prostitution.

Anyhow, it becomes clear that sometimes, Google overrides the pre-publication harm-weighting of journalistic organizations, by delisting search results of journalistic organizations. Thereby, Google makes some journalistic productions less visible to the public, without consulting the source about a potential defence for upholding the URLs.

The moral right to be forgotten in journalism thus seems to braid with the legal right to be forgotten, which is codified in the General Data Protection Regulation. Google's solution to restore one's online image is probably most effective and for many requestors satisfying, by making the journalistic production less visible to the public. However, I argue that they should not override journalistic institutions in deciding what information is of public relevance. Moreover, I argue that they should not be the most prominent executor of a moral right to be forgotten in journalism, for three reasons.

First, because the current arbiter of evaluating unpublishing requests is a commercial entity, which is undesirable. Executives of Google must meet stakeholders interests: optimizing profits. Any evaluation of an unpublishing request is a time-consuming mission, as these requests are often complex. Moreover, to do a proper re-evaluation, Google needs to expand its resources by training staff on how to implement these policies (Abril & Lipton, 2014, p. 385). All of these measures are costly for Google, which results in a lack of intrinsic incentives to evaluate delisting requests properly.

Secondly, although Google released a transparency report on the handling of delisting requests in general, its policy remains opaque. Up to this point, Google is using its internal procedures, that are not fully disclosed to the public (Abril & Lipton, 2014, p. 384). There is no control or whatsoever on Google's handling. For this reason, 80 internet scholars wrote an open letter to Google by urging them to release data about their internal procedure of handling delisting requests (Goodman, 2018, section 1). Although this letter was not specified on data about delisting journalistic content, it shows that Google's opaqueness is undesirable, also for

European journalism. Although news organizations do get a notification whenever the content of them is delisted, any form of justification for the delisted articles is missing. News organizations or requestors can step to the court if they disagree with Google's decision. However, there are some disincentives to do so. It is potentially very costly, and taking it up with Google requires courage. Besides that, bringing a case to court could result in the Streisand-effect, which refers to unwanted exposure during an attempt to prevent exposure.

Third and most important, I want to argue that Google does not have the capacities to determine what is in the public interest. Google is suffering from an epistemological gap to adequately assess whether something is in the public interest. Notably, Google suffers from a lack of local knowledge. How is Google to know when the public of a small town in The Netherlands has a right to know about certain information processed in a journalistic production? Moreover, Google does not know under what circumstances the journalistic production was created. More likely, news organizations themselves have a better insight into the current relevance of an article since they have the knowledge about a local society and the know-how of the creation of the article.

Because of these reasons, the choice to unpublish or not is supposed to be a choice made by journalistic organizations. Determining the relevance of a particular journalistic production is central to press freedom and democracy. So, journalistic organizations should not remain aloof about the desire to re-evaluate potential irrelevant, but harming content. Instead, they should opt for self-managing unpublishing requests by respecting a moral right to be forgotten. Nevertheless, as shortly mentioned above, making content less visible could be an interesting solution to a moral right to be forgotten in journalism. It is therefore, that although news organizations should bear the responsibility of any unpublishing decision, they should find a way to cooperate with Google as it almost has a monopoly on search results.

Conclusion

The work of applied ethicists could be seen as pulling the breaks on current conduct. News organizations could view this thesis likewise; by understanding the moral right to be forgotten in journalism as something that limits them. Imaginably, their aversion can be explained since terminology like 'a moral right to be forgotten' and 'unpublishing requests' insinuate that journalistic content will be removed. However, this thesis is more about stimulating the willingness to accept that their influence can have ramifying consequences for individual lives. The privacy violations that come with the upholding of a journalistic production can outweigh its current relevance for the public. Therefore, this thesis should be viewed as steering the wheel in the right direction that protects both press freedom and privacy desires by finding nuanced solutions¹¹. As irrelevant news productions are likely to grow by time -because a new generation of irrelevant but harming journalistic productions will arise- the call for a moral right to be forgotten in journalism will become louder.

In this thesis, I have attempted to specify how a moral right to be forgotten should be balanced with the right to a free press. I argued that news organizations should respect a moral right to be forgotten in journalism. Hereafter, potential counterarguments against a moral right to be forgotten were identified and challenged. It was argued that in many cases, the foremost function of press freedom – being society's watchdog by holding public officials to account- is not likely to be affected by adopting an unpublishing framework. Moreover, nuanced middle ground can be found between protecting individuals' privacy and protecting the archival integrity and accountability of journalistic organizations. To prevent an economic burden and to commit to ethical standards of conducting responsible journalism, news organizations should stimulate informed consent of news subjects. News subjects have to know what they sign up for when they decide to cooperate with a journalistic production.

To see when privacy rights or press freedom trump one another, I specified on both ends under which circumstances they should outweigh each other. Press freedom should trump privacy rights whenever the information in the journalistic production contributes to the core function of journalism -being societies watchdog- by controlling those with power in order to maintain a healthy democracy. Or, when the information refers to someone who voluntarily stepped in the public eye. In these cases, society has a right to know, and the information ought

¹¹ The used metaphor of steering the wheel towards the right direction instead of pulling the breaks on current conduct recently caught my eye when reading a Dutch newspaper. It originates from philosopher Maxim Februari.

to be protected. Privacy, on the other hand, trumps press freedom whenever the news subjects due to minority, vulnerability, victimization, were not able to give informed consent to cooperate with the journalistic production. A lack of informed consent at times of the creation of the journalistic production means news organizations should be more inclined to grant unpublishing requests. Although these circumstances are not absolute nor decisive, they can provide pragmatic guidance to this balancing act. Besides that, people that have made a mistake in the past (e.g. criminal activity) should be granted a second chance if they can demonstrably show that they changed their lives for the better.

News organizations should opt for the self-management of a moral right to be forgotten in journalism. Potentially, news organizations could seek for collaboration with Google since they have the power to make journalistic content no longer instantly findable. By acknowledging this moral right, news organizations take pride in conducting responsible journalism.

References

Abril, P., & Lipton, J. (2014). The Right to be Forgotten: Who Decides What the World Forgets? *Kentucky Law Journal*, 103(4), 363–384. Retrieved from <https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1074&context=klj>

Art. 17 GDPR. (2017, June 12). Right to erasure ('right to be forgotten'). Retrieved April 12, 2020, from <https://gdpr-info.eu/art-17-gdpr/>

Ball, J., & The Guardian. (2017, February 21). EU's right to be forgotten: Guardian articles have been hidden by Google | James Ball. Retrieved April 30, 2020, from <https://www.theguardian.com/commentisfree/2014/jul/02/eu-right-to-be-forgotten-guardian-google>

Blanken, H. (2007, December 16). Moeten de media kunnen vergeten? Retrieved April 24, 2020, from <https://www.henkblanken.nl/2007/11/21/moeten-de-media-kunnen-vergeten/>

Brock, G. (2016). *The Right to be Forgotten: Privacy and the Media in the Digital Age* (Vol. 2016). Retrieved from <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/The%20Right%20to%20be%20Forgotten%20Extract.pdf>

Craft, S., & Meyers, C. (2010). *Journalism Ethics, Chapter 3: Press Freedom and Responsibility*. Oxford, United Kingdom: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780195370805.003.0003>

Dawes, S. (2013). Press Freedom, Privacy and The Public Sphere. *Journalism Studies*, 15(1), 17–32. <https://doi.org/10.1080/1461670x.2013.765637>

Decew, J. W. (1997). *In Pursuit of Privacy* (1st ed.). Retrieved from https://books.google.nl/books?id=Fi5zDwAAQBAJ&pg=PA58&lpg=PA58&dq=judith+wagner+privacy+reasonable+person+normal&source=bl&ots=89vWozrJnx&sig=ACfU3U0lsHSujqcoV90ns_TsEkwUrVpRpQ&hl=nl&sa=X&ved=2ahUKEwjGy8z78MfpAhVbIMUKHVqbD1IQ6AEwAHoECAoQAQ#v=onepage&q=judith%20wagner%20privacy%20reasonable%20person%20normal&f=false

Dendy, G. (1996). The Newsworthiness Defense to the Public Disclosure Tort. *Kentucky Law Journal*, 85(1, Article 5), 147–169. Retrieved from <https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1630&context=klj>

Dutch Council for Journalism. (n.d.). Conclusions, keyword “Archiving.” Retrieved April 20, 2020, from <https://www.rvdj.nl/uitspraken?search=1&vrijzoeken=&klagers=&betrokken=&jaar=&nummer=&medium=&trefwoorden%5B%5D=14542>

Edmonds, R., & Poynter. (2016, September 30). Newspapers hit with a wave of requests to take down embarrassing archived stories. Retrieved April 22, 2020, from <https://www.poynter.org/ethics-trust/2016/newspapers-hit-with-a-wave-of-requests-to-take-down-embarrassing-archived-stories/>

English, K., & Associated Press Managing Editors. (2009). *The longTail of news: To unpublsh or not to unpublsh*. Retrieved from http://www.journalismproject.ca/sites/www.j-source.ca/files/attachments/Long%20Tail%20report_Kathy_English.pdf

Ethics Advisory Committee of the Canadian Association of Journalists (2014). *On The Record: is it really consent without discussion of consequences?* Retrieved from <https://j-source.ca/article/informed-consent/>

European Union Agency for Fundamental Rights. (2018). *Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level*. Retrieved from https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf

Floridi, L., Kauffman, S., Kolucka-Zuk, L., La Rue, F., Leutheusser-Schnarrenberger, S., Piñar, J., ... Wales, J. (2015, February 6). The Advisory Council to Google on the Right to be Forgotten. Retrieved April 26, 2020, from <https://static.googleusercontent.com/media/archive.google.com/nl//advisorycouncil/advisement/advisory-report.pdf>

Fomperosa Rivero, Á. (2017). Right to Be Forgotten in the European Court of Justice Google Spain Case: The Right Balance of Privacy Rights, Procedure, and Extraterritoriality. *SSRN Electronic Journal, January* (2017), 1–48. <https://doi.org/10.2139/ssrn.2916608>

Garcia-Murillo, M., & MacInnes, I. (2018). Così fan tutte : A better approach than the right to be forgotten. *Telecommunications Policy, 42*(3), 227–240. <https://doi.org/10.1016/j.telpol.2017.12.003>

Goodman, E. P. (2018, May 22). Open Letter to Google From 80 Internet Scholars: Release RTBF Compliance Data. Retrieved June 6, 2020, from <https://medium.com/@ellgood/open-letter-to-google-from-80-internet-scholars-release-rtbf-compliance-data-cbfc6d59f1bd>

International Council on Archives. (1996). *Code of Ethics*. Retrieved from https://www.ica.org/sites/default/files/ICA_1996-09-06_code%20of%20ethics_EN.pdf

Jones, M. L. (2016). *Ctrl + Z: the right to be forgotten* (1st ed.). Retrieved from https://books.google.nl/books?hl=nl&lr=&id=zq84DwAAQBAJ&oi=fnd&pg=PP11&ots=oj9oV1xL_x&sig=f0dASRCCnAY1POK1C_4Ih7tXPRI&redir_esc=y#v=onepage&q=privacy%20control&f=false

Katell, M., & Moore, A. D. (2015). Value of Privacy, Security, and Accountability. *SSRN Electronic Journal*, 1–20. <https://doi.org/10.2139/ssrn.2673758>

Kupfer, J. (1987). Privacy, Autonomy, and Self-Concept. *American Philosophical Quarterly, 24*(1), 81–89. Retrieved from <http://www.jstor.com/stable/20014176>

Mayer-Schoenberger, V. (2007). Useful Void: The Art of Forgetting in the Age of Ubiquitous Computing. *SSRN Electronic Journal*, 1–26. <https://doi.org/10.2139/ssrn.976541>

McIntosh, N., & BBC. (2015, June 25). List of BBC web pages which have been removed from Google's search results. Retrieved April 30, 2020, from <https://www.bbc.co.uk/blogs/internet/entries/1d765aa8-600b-4f32-b110-d02fbf7fd379>

McNealy, J. E., & Alexander, L. B. (2017). A Framework for Unpublishing Decisions. *Digital Journalism*, 6(3), 389–405. <https://doi.org/10.1080/21670811.2017.1301779>

Meyers, C. (1993). Justifying Journalistic Harms: Right to Know vs. Interest in Knowing. *Journal of Mass Media Ethics*, 8(3), 133–146. https://doi.org/10.1207/s15327728jmme0803_1

New York Times. (2020, May 29). White Woman Is Fired After Calling Police on Black Man in Central Park. Retrieved May 31, 2020, from <https://www.nytimes.com/2020/05/26/nyregion/amy-cooper-dog-central-park.html>

Oghia, M., & Centre for International Media Assistance. (2018). *Information Not Found: The "Right to Be Forgotten" as an Emerging Threat to Media Freedom in the Digital Age*. Retrieved from <https://www.cima.ned.org/publication/right-to-be-forgotten-threat-press-freedom-digital-age/>

Pereira, A. (2014). *The Ethics of Memory in a Digital Age* (1st ed. ed., Vol. 2014). London, United Kingdom: Palgrave Macmillan. <https://doi.org/10.1057/9781137428455>

Petley, J. (2012). The Leveson Inquiry: Journalism ethics and press freedom. *Journalism: Theory, Practice & Criticism*, 13(4), 529–538. <https://doi.org/10.1177/1464884912443498>

Raad voor de Journalistiek / Dutch Council for Journalism. (n.d.). Procedure. Retrieved May 8, 2020, from <https://www.rvdj.nl/procedure>

Rachels, J. (1975). Why Privacy is Important. *Philosophy & Public Affairs*, 4(4), 323–333. Retrieved from https://www.jstor.org/stable/2265077?casa_token=Zbmj9EqiILEAAAAA%3AwUb3UUacA4M7IEHUM6Heuh0TN1iCtHH2YIeZHjD2iEJss7XuHTaFEHJdY2aly7KaKXB6TGvZfZCo2VCSq4YREZRwIsmSVwlexT_BM1mv0WKVG7Ppkwg&seq=11#metadata_info_tab_contents

Rantanen, T., Jääskeläinen, A., Bath, R., Stupart, R., & Kelly, A. (2019). *The future of national news agencies in Europe: executive summary* (Executive Summary ed.). <https://doi.org/10.21953/lse.aeginold23jj>

Reuters Institute, Nielse, R., Newman, N., Fletcher, R., & Kalogeropoulos, A. (2019). *Digital News Report 2019*. Retrieved from https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2019-06/DNR_2019_FINAL_0.pdf

Rusu, M. (2015). From the Will of Memory to the Right to Be Forgotten – A Paradigm Shift in the Culture of Remembering. *Philobiblon. Transylvanian Journal of Multidisciplinary Research in Humanities*, 20(2), 384–411. Retrieved from https://www.researchgate.net/publication/287632937_From_the_Will_to_Memory_to_the_Right_to_Be_Forgotten_-_A_Paradigm_Shift_in_the_Culture_of_Remembering

Santín, M. (2017, March 17). The problem of the right to be forgotten from the perspective of self-regulation in journalism. Retrieved April 26, 2020, from http://www.elprofesionaldelainformacion.com/contenidos/2017/mar/17_esp.pdf

Satne, P. (2020). Kantian Forgiveness: Fallibility, Guilt and the need to become a Better Person: Reply to Blöser. *Philosophia*, 2020, 1–23. <https://doi.org/10.1007/s11406-020-00188-4>

Shapiro, I., & Rogers, B. M. (2016). How the “Right to be Forgotten” Challenges Journalistic Principles. *Digital Journalism*, 5(9), 1101–1115. <https://doi.org/10.1080/21670811.2016.1239545>

Shoemaker, P. J., Eichholz, M., Director, Kim, E., & Wrigley, B. (2001). Individual and Routine Forces in Gatekeeping. *Journalism & Mass Communication Quarterly*, 78(2), 233–246. <https://doi.org/10.1177/107769900107800202>

Smith, J. (1990). *Printers and Press Freedom*. Retrieved from <https://books.google.nl/books?hl=nl&lr=&id=mjzVBiWwSogC&oi=fnd&pg=PR11&dq=defining+press+freedom&ots=w5BoxPWhBS&sig=KlKE3kyglRyd-KnNpOke5RXJlzk#v=snippet&q=defining%20press%20freedom&f=false>

Smith, M., & Google. (2018, February 26). Updating our “right to be forgotten” Transparency Report. Retrieved April 30, 2020, from <https://blog.google/topics/google-europe/updating-our-right-be-forgotten-transparency-report/>

Tanner, S. J., Pearson, M., Sykes, J., & Green, K. (2010). Researching journalists and vulnerable sources: issues in the design and implementation of a national study. *Advances in Communication and Mass Media Research*, 2010(x), 87–96. Retrieved from <https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.nl/&httpsredir=1&article=1248&context=creartspapers>

United Nations. (2019, May 7). A free press is ‘cornerstone’ for accountability and ‘speaking truth’. Retrieved April 29, 2020, from <https://news.un.org/en/story/2019/05/1037741>

Valentini, L. (2012). Ideal vs Non-ideal Theory: A Conceptual Map. *Philosophy Compass*, 7(9), 654–664. <https://doi.org/10.1111/j.1747-9991.2012.00500.x>

van Riessen, P., & Quote. (2020, January 12). Opgepast: deze Quote-artikelen mag u van Google niet meer lezen. Retrieved April 30, 2020, from <https://www.quotenet.nl/zakelijk/a30467779/opgepast-deze-quote-artikelen-mag-u-van-google-niet-meer-lezen/>

Vollmer, N., & European Union. (2018, September 5). Article 85 EU General Data Protection Regulation. Retrieved April 24, 2020, from <https://www.privacy-regulation.eu/en/article-85-processing-and-freedom-of-expression-and-information-GDPR.htm>

Wells, T. (2013, January 3). Freedom of the press is not the same as freedom of speech. Retrieved May 20, 2020, from <http://www.philosophersbeard.org/2013/01/freedom-of-press-is-not-same-as-freedom.html>

Westin, A. F. (2003). Social and Political Dimensions of Privacy. *Journal of Social Issues*, 59(2), 431–453. <https://doi.org/10.1111/1540-4560.00072>

Xue, M., Magno, G., Cunha, E., Almeida, V., & Ross, K. W. (2016). The Right to be Forgotten in the Media: A Data-Driven Study. *Proceedings on Privacy Enhancing Technologies*, 2016(4), 389–402. <https://doi.org/10.1515/popets-2016-0046>

Zalta, E. N., & Stanford Encyclopedia of Philosophy. (2019, January 16). Informed Consent. Retrieved June 2, 2020, from <https://plato.stanford.edu/entries/informed-consent/>