**The “Right to be Forgotten” is a Gift**

In *Blink Twice,* Zoë Kravitz’s directorial debut, the main antagonist Slater King (played by Channing Tatum) states, “It’s a gift to forget.”[[1]](#endnote-1) This sentiment brings to mind the “right to be forgotten”[[2]](#endnote-2) under the General Data Protection Regulation (GDPR) of the European Union. Article 17 of the regulation provides individuals with the right to request the erasure of personal data from online platforms, without undue delay, if one of a number of conditions is met.[[3]](#endnote-3) In simpler terms, the doctrine allows individuals to request the removal of personal data from online search results and other digital platforms. While the “right to be forgotten” aligns with the EU’s opt-in approach to data privacy, where users must actively agree to data collection, the U.S. follows an opt-out model which assumes consent until a user takes action to revoke it.[[4]](#endnote-4) Despite this fundamental difference, the U.S. should not dismiss the doctrine outright. Instead, it should tailor the “right to be forgotten” to fit within American jurisprudence in order to balance privacy rights with First Amendment protections.

The First Amendment protects freedom of speech which makes it difficult for the government to restrict not only the speech of online platforms but also the removal of publicly available, truthful information. In *Bartnicki v. Vopper*, the Supreme Court ruled that the publication of lawfully obtained information about matters of public concern is protected under the First Amendment, even if the original appropriation of the information was illegal.[[5]](#endnote-5) This case demonstrates the U.S.’s preference for safeguarding the right to free speech over the right to privacy. However, First Amendment protections do not entirely preclude data privacy regulations.

 First, the “right to be forgotten” could be applied to minors who have limited First Amendment rights.[[6]](#endnote-6) Allowing individuals to erase data about themselves which was posted or collected while they were underage is a possible valid application of the doctrine. The Court, additionally, has consistently recognized the protection of children as a compelling government interest.[[7]](#endnote-7) Second, the doctrine could also be “narrowly tailored”[[8]](#endnote-8) to target commercial data brokers, as commercial speech receives less First Amendment protection. This category of speech defined as a promotion of a commercial transaction includes advertising, promises, and solicitations.[[9]](#endnote-9) These actions are subject to some regulations to protect consumers and prevent fraud.[[10]](#endnote-10) For example, if a user unsubscribes from a service, the government could require that all affiliated subsidiaries or data collectors[[11]](#endnote-11) also honor the request within a reasonable time period. Additionally, penalties could be imposed on entities that continue to contact users after they have requested removal from a database or opted out of communications regarding a particular product.

A third option could be to follow existing state legislation, such as the California Consumer Privacy Act.[[12]](#endnote-12) The CCPA already grants consumers a “right to delete”[[13]](#endnote-13) personal information collected from them, subject to certain exceptions. Additionally, the Act provides other rights such as the right to limit[[14]](#endnote-14) the use and disclosure of sensitive personal information and the right to correct[[15]](#endnote-15) inaccurate personal information held by a business. Overall, legislation similar to the CCPA could be adopted at the federal level and be refined through trial and error to strengthen consumer protections and test the constitutional limits of such regulations.

Moreover, there seems to be increasing momentum for the government to enact legislation influenced by the “right to be forgotten.” In light of the recent TikTok ban[[16]](#endnote-16) upheld by the Supreme Court and worries about the collection of user data, policymakers should strike while the iron is hot as public and political attention is hyper focused on data privacy. In addition, the “right to be forgotten” aligns with the First Amendment principle of the marketplace of ideas. This theory suggests that the best way to arrive at truth is through open discourse, ideas that compete freely rather than being restricted or suppressed.[[17]](#endnote-17) In this instance, if the government grants citizens the “right to be forgotten” then individuals will either take advantage of the right or not. If citizens neglect to use this right, then it can be inferred that they consent to the collection and use of their data.

The ability of collaboration between the U.S. and EU can also make the application of the “right to be forgotten” an attractive option. The cyber realm is still largely uncharted territory, ripe for the taking.[[18]](#endnote-18) If the U.S. and EU could join forces to promote a privacy focused framework, to counter the growing threat of digital surveillance and predatory data collection, democratic nations could create a model that prioritizes individual freedoms while still addressing legitimate national security concerns.

 Ultimately, the U.S. should not idly sit by. The cyber realm is quickly and continuously growing and expanding. The first to establish legal precedents in this space may gain significant influence over global data governance. Rather than saying “It’s a gift to forget,” the government should embrace the opinion that “It’s a gift to be forgotten,” and not be so quick to look a gift horse in the mouth.

1. BLINK TWICE (Amazon MGM Studios 2024). [↑](#endnote-ref-1)
2. David L. Hudson Jr., *Right to Be Forgotten*, FREE SPEECH CENTER AT MIDDLE TENN. STATE UNIV. (July 2, 2024), https://firstamendment.mtsu.edu/article/right-to-be-forgotten/. [↑](#endnote-ref-2)
3. Art. 17 of 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). [hereinafter GDPR] [↑](#endnote-ref-3)
4. Professor Buckley O’Hannaidh, EU Data Protection Law (Lecture, Oct. 14, 2024), UNC SCHOOL OF LAW. [↑](#endnote-ref-4)
5. *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001). [↑](#endnote-ref-5)
6. Philip A. Dynia, *Right of Students*, FREE SPEECH CENTER AT MIDDLE TENN. STATE UNIV. (March 23, 2025), https://firstamendment.mtsu.edu/article/rights-of-students/. [↑](#endnote-ref-6)
7. Catherine J. Ross, *Anything Goes: Examining the State’s Interest in Protecting Children from Controversial Speech*, 53 VANDERBILT L. REV. 427 (2000). [↑](#endnote-ref-7)
8. Cynthia Fleming Crawford, *Narrow Applicability is Not the Same as Narrow Tailoring: Applying the First Amendment in First Choice Women’s Resource Centers v. Platkin,* THE FEDERALIST SOC’Y (Fed. 21, 2025), <https://fedsoc.org/commentary/fedsoc-blog/narrow-applicability-is-not-the-same-as-narrow-tailoring-applying-the-first-amendment-in-first-choice-women-s-resource-centers-v-platkin#:~:text=Narrow%20tailoring%20is%20a%20legal,through%20a%20means%2Dends%20test>. (Narrow tailoring is a legal concept that requires a logical cause-and-effect relationship between the burden a law imposes on First Amendment rights and the goal the law seeks to achieve.). [↑](#endnote-ref-8)
9. *Commercial Speech*, CORNELLL LAW SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/commercial_speech> (last visited March 31, 2025). [↑](#endnote-ref-9)
10. *Id.*  [↑](#endnote-ref-10)
11. GDPR, *supra* note iii (extending to controllers and processors hired by the controller). [↑](#endnote-ref-11)
12. Cal. Civ. Code § 1798.100 et seq. [↑](#endnote-ref-12)
13. *Id*. § 1798.105 [↑](#endnote-ref-13)
14. *Id*. § 1798.1210 [↑](#endnote-ref-14)
15. *Id.* § 1798.106 [↑](#endnote-ref-15)
16. *TikTok, Inc. v. Garland*, No. 24-656 (U.S. Dec. 18, 2024). [↑](#endnote-ref-16)
17. Gene Policinski, *What is the Marketplace of Ideas?,* FREEDOM FORUM, <https://www.freedomforum.org/marketplace-of-ideas/> (last visited March 20, 2025). [↑](#endnote-ref-17)
18. *See generally,* Carolyn Kissane & Shahid Mahdi, *Cyberspace: The New Dominant Realm of National Security*, THE HILL (March 24, 2023, 3:45 PM), https://thehill.com/opinion/cybersecurity/3916938-cyberspace-the-new-dominant-realm-of-national-security/. [↑](#endnote-ref-18)