

Recensión Desafíos éticos en el escenario mediático digital

Recension Ethical challenges in the digital media scene

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RESUMEN

El desarrollo de la humanidad a través de la historia nos muestra que en cada etapa de progreso se van generando nuevas formas de adaptación. En cada uno de estos períodos la humanidad se enfrenta a nuevos retos. En esta era de la tecnología, las transformaciones se presentan de forma acelerada, el entorno está cambiando, se desarrollan en ella múltiples formas de saber, aprender, comunicarse, relacionarse, informarse, expresarse y educarse. El libro *Google: Derecho al olvido desafíos éticos en el escenario mediático digital* es una obra colectiva que desde el título invita a la lectura, pues trabaja un tema contemporáneo el cual nos atañe a todos no sólo como especialistas en derecho, comunicación o educación sino como usuarios, los escenarios mediáticos y las implicaciones éticas que se desprenden de la actuación en los mismos. Estamos en la era digital, donde el entorno se configura, entre otros elementos, de redes electrónicas cuyos nodos de interacción pueden estar diseminados por diversos países, la información y la comunicación se ha globalizado.

Palabras clave

Cibercultura; gobernanza electrónica; aspectos antropológicos, históricos y sociales relacionados con la tecnología

ABSTRACT

The development of humanity through history shows us that in each stage of progress new forms of adaptation are generated. In each of these periods, humanity faces new challenges. In this age of technology, transformations occur in an accelerated way, the environment is changing, multiple ways of knowing, learning, communicating, relating, informing, expressing and educating themselves. The book "Google: Right to oblivion ethical challenges in the digital media scenario" is a collective work that from the title invites reading, because it works a contemporary theme which concerns us all not only as specialists in law, communication or education but as users, the media scenarios and the ethical implications that arise from acting on them. We are in the digital age, where the environment is configured, among other elements, of electronic networks whose interaction nodes can be disseminated through different countries, information and communication has become globalized.

Keywords

Cyberculture; electronic governance; anthropological, historical and social aspects related to technology

The development of humanity through history shows us that at each stage of progress new forms of adaptation are generated. In each of these periods humanity faces new challenges. In this age of technology, transformations are presented in an accelerated way, the environment is changing, multiple forms of knowledge, learning, communicating, relating, informing, expressing and educating are developing.

The book *Google: The Right to Forget and Ethical Challenges in the Digital Media Scene* is a collective work which title invites reading, since it deals with a contemporary theme which concerns us all not only as specialists in law, communication or education, but as users, due to the media scenarios and the ethical implications that arise from acting on them.

We are in the digital era where the environment is configured, among other elements, of electronic networks which interaction nodes can be disseminated in different countries; information and communication have become globalized. Technology changes the way we live rapidly, however, our own conceptions of the world are modified with ease. Therefore, this book seeks to be a space for reflection on ethical challenges in the digital media scene, specifically about the right to be forgotten and how it has been assumed in different regions of the world such as Chile, United States of America, Europe and Mexico.

The main axes of the text are: privacy in the digital scenario that involves the culture of the private, the right to data protection and the right to privacy as the inherent right of man, the erasure of network data and the responsibility or accountability. In the first chapter, titled "*Accountability, Systems of Accountability on the Digital Media Scenario*", María José Labrador shows the relationship that must exist between committed media and critical users, highlighting the importance of the application of editorial standards on the current digital media scenario, and emphasizing the revaluation of accountability systems.

The author analyzes cases where situations arise that have resulted in the abandonment of basic ethical standards in media companies, where tensions are shown between the relationship that exists on the right to information and the public and private spheres of people. In this sense, the text highlights the concept of *Accountability* associated with the responsibility or accountability of the media and of the stakeholders in the different dimensions: moral, administrative, political, management, marketing, legal and judicial, constituency and professional. This is considered urgent and necessary in the current digital scenario.

As mentioned by Soria, cited by Labrador, accountability is based on the close relationship between personal and professional ethics, because both make up the personal unit "when personal ethics have been very well forged throughout life, it is easy for it to reflect into our work and in all aspects of our life" (page 29).

Some of the challenges in the rendering of accounts are in the privacy of the data, the reassessment of the public and the private and in the right to forget which is understood as the aspiration of a person to eliminate unfavorable information about himself,

contained in available computer systems that cause current damages, for a plausible reason (Anguita, page 55).

To address these challenges, the author reassesses, on the one hand, the approach of the Media Responsibility System (MAS) applied in various journalistic companies, which involves owners, professionals and users. On the other hand, it addresses self-regulation as a responsibility regarding the decision-making of the media.

The challenges in the digital scenario not only concern the stakeholders of the media, but also knowledge and in, legal terms, emerging tasks. This is how the following chapters of this paper bring ideas to this discussion. Specifically, the chapter titled "Social media and the right to forgot", written by Pedro Anguita Ramírez, gives an account of some legal problems that have arisen from the growing accumulation of information on the network, which is usually maintained in a perennial. This has generated increasing requests for the elimination of this information by people who feel their fundamental rights are violated, appealing to the right to be forgotten.

To account for the foregoing, Anguita exposes fourteen cases in Chile, and judicial decisions that were taken in relation to these. The work only addresses the actions presented on digital media such as newspapers, journals or television channels. The reasons for these conflicts were mainly the right to privacy and the right to honor. The legal apparatus envisions the collision between different rights, such as the right to be forgotten versus the right to information.

The technological convergence makes the problem of the right to oblivion more complex, since information is not only lodged in the journalistic medium, but we can access it through mechanisms such as the Internet search engines. Specifically, in the case of Google, the argument used in its defense is the lack of responsibility for the content published on the network, since it has the feature of a search engine and not of a content creator.

Another dimension of the problem is the discussion about the legal deposit of publications and their increased accessibility. The first is the printers' obligation, where they have to send a specific number of each edition to the National Library, which leaves the document with the information contained indefinitely filed; the second refers to the circulation of contents on the Internet permanently.

Edward Carter follows a similar issue in the third section of the paper, titled "Practical Obscurity and Free Expression in the United States of North America", where part of the question is: Must or should the Internet forget certain things or at least file them in the dark? To discuss the right to practical obscurity in personal information under pressure, in the case of the United States, the First Amendment of the Constitution protects freedom of speech.

First, this author presents the use that the police makes of criminal photographs for the application of the law, however, this practice raises questions such as: what about the photos related to old arrests? Should an individual be marked forever by a single error? Should there be some kind of right to be forgotten? To answer the previous questions

Carter presents an explanation about the role of forgetting in human life, starting from scientific studies with philosophical, psychological and neurological character; the latter have shown that forgetting is an active, normal, necessary and regulated process of the brain. The neurotransmitter dopamine stimulates a receptor that causes memory and the same dopamine neurons almost immediately begin to stimulate the receptor that triggers forgetfulness.

The contributions generated by science in relation to forgetting have been taken up by the jurisprudence of the Supreme Court of the United States that is known as "practical darkness", which is used for the first time in a Supreme Court case related to the criminal record, where it was argued that this was not considered public information. From this, the concept has been used in other scenarios such as the opinions of state courts and articles in law journals.

In this way "the 'practical darkness' meant that the information, that was once in the public eye, could re-enter a zone of privacy with the passage of time and the original information would be difficult to locate, this in the context of criminal investigation" (p.106). An element that further complicates criminal proceedings is the inclusion of digital technology, which is two-sided. On the one hand, it favors access to privacy, and on the other, it allows the protection of data based on technological measures, which transforms another right: intellectual property.

Lastly, this section shows the American version of the right to be forgotten, which is not applied as such because it opposes to the First Amendment of the Constitution of the United States of America, which prohibits the creation of any law that reduces the freedom of speech or violates the freedom of the press.

However, there are precedents such as California's online erasure law, where social media companies must remove content published by minors under the age of eighteen at their request; they are courts that protect the right of people to change their lives and problems of privacy and freedom of speech related to technological innovations, so, though the brain forgets, digital devices do not, since storage and information recovery are among some of their typical functions.

According to Lorenzo Cotino Hueso, in his chapter "Google and the Right to be Forgotten in Europe: 'Forgetting' and other negative tendencies regarding the informative freedoms of the Internet", the problem arises from the conclusions and the judgment of the *Google case versus the Spanish Agency for Data Protection (AEPD)*, and Mario Costeja who appears on the network for an announcement of the auction of properties related to an embargo for Social Security debts.

The following issues arise from the case: the first has to do with the territorial application of the *Google* search engine located in the United States of America and used in Europe. The second is related to data processing and is consistent with the first and third, on the consideration of the right to be forgotten where the party in interest can use a search engine with the object of not allowing his data to be indexed.

The conclusions of the general counsel overseeing the case were favorable to the freedom of speech and the information on the Internet. In essence it was said that the *Google* search engine is essential to exercise the fundamental right to access information in Europe, and that the role of the *Google* intermediary cannot be distorted by making it censor the content, otherwise the right to access the information would be compromised. Some elements rescued by the author of the judgment were:

- *Google* is responsible for the processing of personal data even though it does not control the source information of the web pages it indexes (section 34).
- *Google* is subject to the regulations of the European Union and, therefore, is subject to the legislation on Spanish data protection (sections 50 and following).
- Neither the economic interest of *Google* nor that of users to upload information of others justifies the affection to privacy and data protection.
- Citizens can contact *Google* to request the withdrawal of certain results.

From the above, the author draws some considerations about future possibilities in relation to the ruling, where once again the right to be forgotten and freedom of speech are offset against *Google*'s position.

In the fifth chapter, titled "The right to be forgotten on the Internet and the Streisand effect: applicability and solutions", Óscar Jaramillo and Lucía Castellón take up the case mentioned in the previous section on Mario Costeja to explain the Streisand Effect from the cybernetic approach and explore the applicability of the right to be forgotten in the different digital ecosystems found on *web 1.0* to *3.0*.

The Streisand Effect is known as those matters where, by means of a legal provision, the dissemination of information on the network is prohibited, and it is then, that said information, instead of going unnoticed, becomes viral due to said prohibition. The above can be explained by identifying the characteristics of digital ecosystems in which communication processes and technology converge; they are reflected in what has been called web 1.0, 2.0 and 3.0.

Currently, the tendency is to generate and share materials that are developed for different purposes. The previous idea makes technologies such as the Internet go from being an information warehouse, as was Web 1.0, to a space for the creation and sharing of information on *Web 2.0* - a term coined by Tim O'Reilly in 2004 to refer to a second generation in the history of the web based on user communities-.

Web 2.0 is a set of technologies that allow participating, collaborating and sharing on the network, which generates a viralization mechanism, which in turn has implications in the application of the right to be forgotten, because if it were applied, the file requested by a claimant of the different devices in which the information was lodged would have to be erased.

We would have to consider cloud storage, which is related to the next level in the development of the Internet: the *web 3.0* or *semantic web*, where what is sought is to

organize the information that users have made available on the internet through various developments such as semantic networks or ontologies which are tools that organize and reuse information; this is the important space to work with metadata and classification standards that give order to what is produced and disseminated on the Internet.

The problem of the right to be forgotten becomes, thus, more complex, since *Web 3.0* brings indexation of content to a level higher than what traditional search engines such as Google have done. Lastly, the authors conclude that an effective application of the right to be forgotten that avoids re-victimization and the Streisand Effect should contemplate customs, ways of communicating and technology.

In regard to the Mexican case, one of the advances that has been made on the subject of Information and Communication Technology (ICT) is to contemplate the right of access from public policies. In 2013, a paragraph was added to the Article 6th of the Political Constitution of the United Mexican States, which states: "The State shall guarantee the right of access to information and communication technologies ..." (Official Journal of the Federation, DOF [Spanish acronym], 2013, Amendment to Article 6th). Essentially "The Federal Executive will be in charge of the universal digital inclusion policy, which will include the objectives and goals in terms of [...] information and communication technologies, and digital skills ..." (DOF, 2013, Transitory articles of the Amendment to Article 6th, Fourteenth). However, this does not suffice; we must continue promoting the development of digital skills not only from the technical point of view, but in terms of ethical action and reflective awareness.

The last chapter written by María Teresa Nicolás Gavilán, titled "The Revaluation of the Digital Identity: Can you 'Restart' on the 3.0 network? Legal and Social Aspects" presents the problem of the right to be forgotten in the context of Mexico, showing what has been done in this regard. This is where the figure of the Federal Institute of Access to Information (IFAI, [Spanish acronym]) currently the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI, [Spanish acronym]) comes into play. And the concept of protection of personal data coupled with the above points to a practical derivation of the right to be forgotten in our country: the right to rectification.

The text consists of four sections. The first section consists in identifying the assets that protect the right to be forgotten; the second, analyzes the way in which the right to be forgotten is protected by the Mexican legislation; the third presents the privacy policies of the main social networks; and the fourth proposes a series of ethical and social conducts for the protection of the right to rectification.

Then, what are the assets that protect the right to be forgotten? The text highlights the honor, privacy and self-image, where personal data and the right to rectification are understood as the power of every human being to amend or clarify erroneous, misleading, deceptive or partial data disseminated through channels of communication that harms the rights of the person. And then, how is the right to be forgotten protected by the Mexican legislation?

From the Political Constitution of the United Mexican States, Article 16th sets forth the data protection general framework. The civil responsibility law also serves as reference. Said legislation considers private life, and a third document, the Federal Data Protection Law published in 2010 includes the so-called ARCO rights: Access, Rectification, Cancellation and Opposition. However, the problems go further as the Internet has been promoting new ethical concerns in addition to those already raised in the past such as the problems of privacy, security and property rights, among others. As technological developments advance, policies are being adjusted.

In conclusion, two main ideas arise from this text, i.e., the importance of knowing and understanding the privacy policies of the platforms being used, since it involves the handling of personal data, and the second is the importance of the role of educators in generating awareness in people on the need to be trained in social and ethical competences in the digital environment, which values the consequences of what is published on the Internet.

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