

Compliance & Ethics Professional

December
2015



A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

www.corporatecompliance.org

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Director, Ethics and Business Conduct
Huntington Ingalls Industries
in Newport News, VA

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Will the right to be forgotten become a tool to dodge background checks?

The EU, under the banner of privacy, has invented a concept called “the right to be forgotten.” The idea seems to be that people should be able to prevent past stories about their activities from showing up in web searches.

But we have already seen privacy laws



Murphy

intended for good purposes used in ways that raise questions. Privacy has been used to make it difficult for working people to report violations on company helplines (e.g., limiting or prohibiting anonymous reports), thus making it easier for bosses to retaliate.

Of course, there are concerns when governments assert untested new powers. If government controls people’s conduct based on broad concepts like privacy, what are the limits? Of course, this right is not absolute. But after the “right to be forgotten” emerged, Google tried to comply by limiting searches in EU-based servers. But privacy regulators in Europe pressed on, demanding they limit searches on any servers on Earth. This certainly raises some difficult, perhaps frightening, questions. If they can limit computers, why not all other sources of information that is supposed to be “forgotten”? Can they also suppress individuals posting things on their Facebook pages? Will this new right stop with servers? Will similar controls eventually apply to newspapers and libraries? If Europe can do this, why not oppressive countries even more determined to control what their citizens can read and learn?

Why should this matter for compliance professionals? One of our tasks is to prevent the hiring of those likely to commit violations. We also conduct due diligence on third parties our companies do business with. For example, is that agent management wants to hire someone with a record of paying bribes? This is difficult work, but with the Internet we at least have a practical tool.

But now comes the right to be forgotten. What happens to the record of a miscreant who has lied, cheated, and stolen in the past? This person has asserted her right to be forgotten, and sued everyone who has a record of her crimes. What about the record of someone who has made a practice of paying bribes? The ministers in his home country, recognizing his “right to be forgotten,” have proceeded against every entity that keeps any record of this criminal’s past conduct. Internet companies, wary of hyper-vigilant privacy police, take the path of least resistance (and expense) and cave in to the pressure to enforce this “right.”

Thanks to the privacy bureaucrats, perhaps your future employee or agent can lie, cheat, and steal, and then pursue the “right to be forgotten,” to enable him or her to try it all again while working for you. Maybe it is time the bureaucrats talk with us in Compliance and Ethics first, before they blaze these new paths. *

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