

Avrupa Birliği ve Tayvan’da Yapay Zekâ Tabanlı Veri Toplama Bağlamında Unutulma Hakkı

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ÖZ

Bu makale, yapay zekâ (YZ) veri işleme bağlamında unutulma hakkının (RTBF) gelişen hukuki yapısını inceleyerek, Avrupa Birliği (AB) ile Tayvan arasındaki karşılaştırmalı bir analiz sunmaktadır. Gizlilik ve kişisel verilerin korunması hukukuna dayanan bu hak, bireylerin özellikle arama motorları ve sosyal medya platformları aracılığıyla kolayca erişilebilen, güncelliğini yitirmiş veya ilgisiz kişisel bilgilerinin yayılmasını kontrol etme yetkisini güçlendirmeyi amaçlamaktadır. Çalışmada, AB'nin Genel Veri Koruma Tüzüğü'nün (GVKT) 17. Maddesi kapsamında unutulma hakkına ilişkin güçlü bir yasal zemin oluşturduğu ve Google Spain gibi emsal kararlarla bu hakkın yorumunun şekillendiği vurgulanmaktadır. Tayvan'da ise bu hak, 603 No'lu Anayasa Yorumu gibi anayasal yorumlar ve Kişisel Verilerin Korunması kanunu'nun (KVKK) kapsamında düzenlenmektedir; ancak unutulma hakkı açıkça kanunlaştırılmamıştır. Makale, ayrıca YZ'nin uzun süreli veri saklama, otomatik işleme ve silinme tekniklerinin uygulanabilirliği gibi alanlarda ortaya çıkardığı zorluklara dikkat çekmekte ve RTBF ilkeleriyle teknolojik gerçekliklerin uyumlaştırılması için gelecekte yasal netliğin sağlanması gerektiği sonucuna varmaktadır.

Anahtar Sözcükler: Unutulma Hakkı, Yapay Zekâ, Veri Gizliliği, Kişisel Verilerin Korunması Kanunu (Tayvan), AB Hukuku.

The Right to be Forgotten Regarding Artificial Intelligence Data Collection in the European Union and Taiwan

ABSTRACT

This paper explores the evolving legal landscape of the right to be forgotten (RTBF) in the context of artificial intelligence (AI) data processing, focusing on a comparative analysis between the European Union (EU) and Taiwan. As a concept rooted in privacy and data protection law, RTBF seeks to empower individuals to control the dissemination of outdated or irrelevant personal information—especially in a digital environment where such data is readily accessible through search engines and social media platforms. The study highlights how the EU has implemented a robust legal foundation for RTBF, particularly under Article 17 of the General Data Protection Regulation (GDPR), and how landmark decisions such as Google Spain have shaped its interpretation. In contrast, Taiwan's approach is shaped by constitutional interpretations, such as Judicial Interpretation No. 603, and statutory provisions within the Personal Data Protection Act (PDPA), albeit without explicit codification of RTBF. The manuscript also addresses the challenges posed by AI, particularly regarding long-term data retention, automated processing, and the technical feasibility of erasure, concluding that future legislative clarity is necessary for harmonizing the principles of RTBF with technological realities.

Keywords: Right to be Forgotten, Artificial Intelligence, Data Privacy, GDPR, Personal Data Protection Act (Taiwan), EU Law

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1- INTRODUCTION

The right to protection of personal data and the right to be forgotten are interrelated concepts. Both rights are fundamentally concerned with the assurance of individuals' capacity to live lives worthy of respect and dignity, to develop freely in their chosen paths, and to retain control over the dissemination of their data (Deterrmann & Sprague, 2011). Additionally, these rights aim to prohibit the use of personal data from the past that may result in discomfort, distress, or emotional distress in the present. The right to the protection of personal data is among the fundamental rights and freedoms, and it has the objective of safeguarding the individual's rights and freedoms throughout the processing of personal data (Eberle, 1997).

With this situation, it was understood that the existing rights could not sufficiently protect the ability to establish dominance over the elements that are part of the person's spirituality, and the concept of personal data was finally discussed. Various legal arrangements were made to protect the data in question, and in 2010, the concept of the 'right to be forgotten' was introduced by adding a new dimension to these (Mantelero, 2013). The major problem raised by artificial intelligence technologies in the context of data protection law is based on the question of how to ensure privacy and confidentiality. The development of technology with a great revolution has created its era by aging the resources that come out of the ground. The requirements of this new era depend on unfamiliar Dynamics (Villaronga, Kieseberg, & Li, 2018).

In this framework, the right to be forgotten will be scrutinized, and artificial intelligence and the protection of personal data will be the main trajectory of this paper. Explanation of privacy and assessments will be provided on the grounds of the EU perspective. The topic will be comprehended from a comparative approach. Additionally, discussing this issue from Taiwan's perspective is crucial. The explanation of contemporary developments in artificial intelligence is essential since fundamentally divergent views on the right to be forgotten and on personal data are recognized in various legal systems.

The European Union and Taiwan were selected for comparative analysis because they reflected distinct yet instructive approaches to the right to be forgotten (RTBF). The EU established itself as a global benchmark with its comprehensive legal framework under the GDPR and landmark jurisprudence such as the Google Spain decision, which significantly shaped international discourse on RTBF. In contrast, Taiwan offered a unique perspective as a non-EU jurisdiction with democratic governance, a developed economy, and an active engagement in personal data protection through its Personal Data Protection Act (PDPA) and constitutional interpretations. Taiwan's evolving legal landscape enabled a meaningful comparison, particularly regarding how jurisdictions outside of the EU adapted, interpreted, or diverged from GDPR-inspired norms, thereby providing broader insights into the global diffusion and contextualization of RTBF principles.

Over the past decade, extensive academic and legal scholarship has explored the contours of the right to be forgotten (RTBF), particularly following the landmark *Google Spain* ruling by the CJEU. Scholars such as Ausloos (2012), Mantelero (2013), Fabbrini and Celeste (2020), and Geraldine (2022) have critically analyzed the scope, limitations, and theoretical underpinnings of RTBF within the EU legal framework. Their works have examined tensions between privacy rights, freedom of expression, and public interest, as well as the extraterritorial implications of GDPR's enforcement. This paper builds upon these debates by offering a comparative dimension that includes Taiwan's evolving approach, which has received relatively limited attention in the existing literature. By integrating both EU and non-EU perspectives, the study aims to contribute to the ongoing discourse on the transnational relevance and challenges of RTBF in the context of AI-driven data environments.

2- THE CURRENT SITUATION IN EU

The Adventure of the Right to Be Forgotten in EU

In terms of historical precedent, the most significant decision regarding the protection of personal data, frequently discussed in conjunction with the "right to be forgotten," is the German Federal Court's ruling on the Census Act, dated December 15, 1983 (Upton, 2022). Since there were no special regulations on data protection in this period, the protection of personal data was guided by the decisions of the German Constitutional Court (Bundesverfassungsgericht -BVerfG) within the framework of the German Constitution (German Grundgesetz-GG). The German Constitutional Court was the primary judicial authority addressing data privacy concerns in the 1970s (Fabbrini & Celeste, 2020). Its decisions on matters about the protection of private life, made before the Census Act, established the parameters within which subsequent legislation would be formulated (Guo et al., 2023).

In the German Constitutional Court's decision on December 15, 1983, the overarching purpose of the Census Act was found to be constitutional. However, it was noted that the law fell short of providing the requisite protections to safeguard fundamental rights and freedoms of citizens. In the Decision, the concept of "the right to informational self-determination (Informationelle Selbst bestimmung) was introduced (Wiedemann, 2020).

The first international legal regulation on the right to be forgotten is contained in Directive 95/46/EC on the Protection of Individuals concerning the Processing and Free Movement of Personal Data (Directive 95/46/EC) adopted by the European Parliament and the Council of 24 October 1995 (Ausloos, 2012). Article 12 of Directive 95/46/EC, entitled "right of access", regulates the right to be forgotten and states that individuals have the right to request the erasure of their data if it is incomplete or inaccurate (Ausloos, 2012). Article 17 of the European Union General Data Protection Regulation 2016/679, which was established by the European Commission by making comprehensive amendments to the Directive in line with changing circumstances and needs, provides explicit provisions on the right to be forgotten. As outlined in this article, the individual whose personal data is being collected and processed is granted the right to request its deletion from the data controller without undue delay if it is no longer necessary with the purpose for which the data was originally collected or processed, or in the absence of a legal justification for the processing of the personal data in question (Kocharyan, Vardanyan, Hamulák, & Kerikmäe, 2021).

Right to Be Forgotten

The right to be forgotten includes the right to be prevented from quickly accessing or appearing in front of a person repeatedly because content that has been disseminated by the law and contains accurate information has become outdated over time. The right to be forgotten is currently understood to apply to instances where personal data can be accessed through search engines or shared on social media platforms. However, this right has become controversial once more following the CJEU decision, known as the Google Spain decision. The objective of this legislation is to prevent any adverse effects on individuals whose data, which is accessible only through an Internet search, becomes overwhelming (Francesca, Fabrizio, & Lorenzo, 2022).

The right to be forgotten appears as a data protection right that protects individuals even though the internet is an always accessible archive. This right aims to prevent the deletion or further accessibility of personal data belonging to individuals who seek to exercise their right to freedom of opinion and expression by challenging content deemed to be disturbing in the digital environment. In this context,

individuals possess the authority to control and supervise their personal data, despite the fact that the Internet functions as an accessible archive that is perpetually accessible. This allows individuals to be freed from being prisoners of his/her recorded past and not to carry the shackles of the past and the mistakes of the past, which are no longer in the public interest to be accessed.

Artificial Intelligence (AI) Systems

In light of the potential incompatibility of the right to be forgotten with AI technologies, it becomes apparent that the long-term storage and accessibility of data, as well as the capacity of AI systems for indefinite data retention, represent significant challenges (Villaronga et al., 2018). The justification for the emergence and implementation of the right to be forgotten is directly related to how AI systems process data. It can be expected that claims of the right to be forgotten will be made in relation to data that has been processed through these systems. The fact that AI systems offer advanced search filters may harm the effectiveness of the methods of meeting right to be forgotten claims. This should also be considered in the construction of the right to be forgotten (Atata, 2024).

In scenarios where AI systems are used under the control of search engines or social media platforms and form the infrastructure of these platforms, the examination of the right to be forgotten requests directed to these platforms can also be carried out using the AI system. It will be possible to train AI systems through previous decisions and the aforementioned guidelines on the implementation of the right to be forgotten. In this manner, AI systems will be able to determine, on the basis of input from relevant data sources and algorithms, whether a right to be forgotten request should be granted (Dalberg, 2023).

Realization of the Right to be Forgotten through AI

CJEU has defined the right to be forgotten, as established in the Google Spain judgment, as "the right to be forgotten," which is to say the right to have one's past information rendered permanently inaccessible to other individuals unless there is a compelling overriding interest. The Court asserted the necessity of striking a balance between the right of access to information and the rights of protection of personal data and privacy. Related to the issue is the problem of the automatic realization of this oblivion instead of humans, or at least with the help of artificial intelligence algorithms that provide significant technical support to humans (Atata, 2024).

As in the case of the automatic removal of illegal content or disinformation mentioned, algorithms are ill-equipped to perform such a balancing, which would require a certain degree of human intervention, at least in the form of the final verification of the algorithmic recommendation. Therefore, if automatic removal or deindexation of content in the context of the right to be forgotten tips the balance too far in favor of data protection, the content provider's freedom of expression or users' right to information will be disproportionately infringed (Geraldine, 2022)..

3- THE CURRENT SITUATION IN TAIWAN

Taiwan, not being a member state of the European Union, is not subject to or bound by any relevant directives or regulations of the EU. However, the right to be forgotten, as a fundamental human right stemming from the right to privacy, should not vary for any natural person based on geographical location. In Taiwan, based on academic discourse and practical developments, there have been several court judgments that recognize individuals' rights to access rights closely related to or equivalent to the

right to be forgotten. Thus, this section provides an overview of the regulatory framework, recent legal cases, and future considerations in Taiwan's approach to this issue (Chiou, 2020).

3.1 Constitutional Foundations and Informational Self-Determination

From a constitutional perspective, it is generally considered that in Taiwan, the right to be forgotten is a concrete manifestation of the "right to privacy" (Choi, 2023). Although Taiwan's constitution does not expressly guarantee the right to privacy, many constitutional interpretations done by the Constitutional Court have pointed out that the right to privacy is an indispensable fundamental right for upholding individual human dignity and personality development. Therefore, it should be protected under Article 22 of The Constitution of the Republic of China (Chen, 2010).

In Judicial Interpretation No. 603 done by the Constitutional Court, it is acknowledged that people enjoy the right to "Information Self-Determination," which ensures individuals' right to decide whether to disclose their personal information, the extent of disclosure, the timing, the manner, and to whom the information is disclosed. It also safeguards individuals' right to know and control the use of their personal data, as well as the right to correct inaccuracies in the data. Just as the right to be forgotten may lead to conflicts with other fundamental rights, the Constitutional Court recognizes that a balance must also be struck between the right to informational self-determination and other basic rights (Chen, 2010). For instance, factors such as the value of news and whether the infringement is excessive are considered in weighing the necessity of protecting both the individual's right to control their information and the freedom of the press. To some extent, this may also provide a framework for operationalizing the right to be forgotten in Taiwan.

3.2 Statutory Regulation: The Personal Data Protection Act (PDPA)

Aside from the Constitution, another possible approach to achieving the right to be forgotten in Taiwan is provided by the Personal Data Protection Act (abbreviated as PDPA). The PDPA, alike the GDPR, draw from the eight principles of personal data protection established by the Organization for Economic Cooperation and Development (OECD). In fact, during the drafting process of the PDPA, many provisions were intended to reference relevant regulations of the precursor to GDPR, Directive 95/46/EC. Hence, the GDPR and PDPA share a degree of similarity due to their alignment with certain principles of personal data protection (Chiou, 2020).

According to the paragraphs of Article 11 of the PDPA, public or non-public organizations are required to maintain the accuracy of personal data and should proactively correct or supplement it upon request by the individual concerned. In cases where the accuracy of personal data is disputed, processing or utilization should be halted proactively or upon request by the individual concerned (Chiou, 2020). Additionally, when the specific purpose for collecting personal data disappears or the time limit expires, organizations should take proactive measures or comply with requests from the individual concerned. Finally, violators of the regulations on collecting, processing, or utilizing personal data should proactively delete, stop collecting, processing, or utilizing such personal data upon request by the individual concerned. In sum, these paragraphs provide concrete protection for data-autonomy, serving as a specific basis for the practice of the right to be forgotten in Taiwan.

3.3 Judicial Interpretation: Analysis of Supreme Court 2020 No. 489

Although the right to be forgotten is a relatively new legal concept in Taiwan, in recent years, the Supreme Court has begun to issue relevant judgments. Below, this paragraph will analyze the development trends of the right to be forgotten in Taiwan using the highly representative 2020 No. 489 Civil Judgment as an example (Chiou, 2020). The 2020 No. 489 Civil Judgment serves as a significant milestone in Taiwan's engagement with the right to be forgotten, albeit indirectly. Unlike the GDPR-based approach in the EU, which explicitly codifies RTBF, Taiwan's judiciary relies on a balancing test rooted in constitutional principles such as informational self-determination and the Personal Data Protection Act (PDPA). In this case, the Supreme Court emphasized multiple factors, including public interest, historical context, the nature of the disclosed information, and the plaintiff's public role. This analytical framework reveals Taiwan's cautious and context-sensitive application, which prioritizes proportionality and seeks to reconcile individual privacy with freedom of expression and the public's right to know. Unlike the more structured "necessity" and "proportionality" principles in EU law, Taiwan's approach remains highly case-specific, with limited precedential effect and no definitive statutory codification of RTBF. This divergence highlights both the normative gaps and potential convergence points as Taiwan continues to engage with global data protection standards.

In 2015, Mr. Shi filed a lawsuit against Google Inc., requesting the removal of all links and webpages related to his name, as well as messages concerning "Mr. Shi throwing games." Mr. Shi asserted that while he was once a manager of a Chinese professional baseball team in 2008 and was implicated in a ball-fixing scandal that garnered significant media attention, he had been cleared of any wrongdoing by a final criminal judgment (Choi, 2023). Furthermore, Mr. Shi had resigned from his position as the team's manager many years prior, rendering the outdated information unnecessary for collection or processing. Additionally, certain media outlets had been disclosing irrelevant private information about Mr. Shi, including his occupations, relationships, and family details, which infringed upon his rights of reputation, privacy, and the right to be forgotten. Google countered by stating that all information is automatically retrieved and indexed by search engine programs from public websites, and that Google is not directly involved in the "collection, processing, or use" of Mr. Shi's personal data.

In the appellate judgment of the case, Mr. Shi's appeal was rejected by the Taiwan High Court, but the Supreme Court found negligence in the judgment. It emphasized the applicability of PDPA in light of advancements in information technology. The court highlighted the importance of respecting individuals' rights and interests in data collection and processing, as outlined in the PDPA (Kung-Chung, 2017). Despite Mr. Shi's argument that Google's actions were motivated by commercial interests, the court concluded that the disputed search results, although outdated, did not warrant deletion under the PDPA. It stressed the need to balance privacy rights with the public's right to know when assessing data collection and processing necessity. Therefore, Mr. Shi's request for deletion was denied under Article 11(3) and (4) of the PDPA.

The Supreme Court in this judgment recognized that in cases where Google has collected and processed personal data related to Mr. Shi, in situations where the Personal Information Protection Act already has explicit provisions, the Supreme Court did not specify the applicable provisions. Instead, it proposed a general standard, namely that when Mr. Shi requests Google to delete the disputed sentences and search results, the court should consider: the nature of the search engine service provided by Google, the impact of deleting the disputed search results on the accessibility of information for internet users, the societal conditions at the time the data was made public and subsequent changes, the specific content of the public interest involved in the linked data, the necessity of recording private facts, the degree of privacy infringement on Mr. Shi caused by publicizing the data, Mr. Shi's role in public life, and the relevance of their actions to the outcomes. The judgment did not specify which specific provisions these considerations correspond to (Shi, Sourdin, & Li, 2021).

3.4 Comparative Reflections and Emerging Themes

The evolving Taiwanese jurisprudence on RTBF demonstrates cautious judicial engagement with digital rights. While the Supreme Court decision acknowledges the necessity of balancing privacy interests against freedom of expression and public interest, it reflects a case-by-case approach without a systematic doctrine comparable to the GDPR. Judicial attitudes remain protective of public access to information, especially in cases involving public figures or historical events. Moreover, the reasoning shows an indirect but growing influence of global norms, including the GDPR and the *Google Spain* ruling, particularly in the court's reference to proportionality and data minimization principles. Taiwan's courts increasingly face the challenge of navigating conflicts between individual reputational rights and collective interests in a digitally transparent society, signaling potential future convergence with more structured international standards.

3.5 Future Considerations

As emotions are part of human nature, in the digital era, the desire to bury past records to avoid their resurgence has become a significant concern. However, despite extensive discussion and use of the term "right to be forgotten" in legal documents, it remains primarily within academic or comparative law and lacks direct legal force in Taiwan. Therefore, as emphasized in the above-mentioned case, the specifics and implications of this right should be determined within the framework of the Personal Data Protection Act. While the appellate ruling in this case defines the right to be forgotten as the entitlement of individuals to request removal of outdated, inaccurate, or irrelevant personal information from search engine results, it should still be stressed that the recognition, content, and legal implications of this right ought to be guided by specific legal provisions. In essence, without explicit legal adoption and specification of its content, the practical usefulness of the right to be forgotten concept in legal practice might be rather limited (Choi, 2023). In summary, regarding the right to be forgotten, Taiwan should continue to refer to the GDPR and enact clear legislation, ensuring that the concept of "being forgotten" becomes an integral part of fundamental rights and is effectively implemented in law.

4- CONCLUSION

Due to technological advancements, there has been a significant decrease in privacy and the ability to freely determine one's future. Individuals' efforts to exist in a fast and permanent world do not diminish their concerns about their privacy and freedom to self-determine their future. The adoption of the right to be forgotten by the European Union, based on existing regulations, to address these concerns is likely to pave the way for new advancements in data protection and privacy issues.

This article has carefully examined the potential construction of the right to be forgotten in both Taiwan and the European Union. It aims to further understand the impact that the right to be forgotten might have on technology law in the age of AI. As technology continues to evolve, it is crucial to adapt our legal frameworks to ensure that privacy and data protection keep pace with these advancements. The right to be forgotten serves as a critical mechanism for safeguarding individuals' rights, and its development will need to address the challenges and opportunities presented by AI and other emerging technologies. By fostering a balanced approach that respects both personal data protection and freedom of expression, we can ensure that this right remains relevant and effective in the digital era..

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