Google as a political subject: The Right to be Forgotten debate 2014-2016

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**Abstract**

**Purpose** – The aim of the study is to create knowledge on how Google and Google search are discursively constructed as a political subject suitable or not suitable for governing in the debate regarding the Right to be Forgotten ruling (RTBF).

**Design/Methodology/Approach** – 28 texts are analysed using a Foucauldian discourse analysis focusing on political problematisations in the media and in blogs.

**Findings** – Google is conceptualised as a commercial company, a neutral facilitator of the world and as a judge of character. The discourse makes visible Google’s power over knowledge production. The individual being searched is constructed as a political object that is either guilty or innocent, invoking morality as a part of the policy. The ruling is framed as giving individuals power over companies, but the power still lies within Google’s technical framework.

**Originality/value** – The ruling opens up an empirical possibility to critically examine Google. The value of the study is the combination of focus on Google as a political subject and the individual being searched to understand how Google is constructed in the discourse.

# 1. Introduction

Google is an important subject in information politics, influencing how knowledge is constructed and distributed, thus being political (Introna & Nissenbaum, 2000; Vaidhyanathan, 2012). Google search is not giving an objective reflection of the world, rather it is producing search results through, among other things, tools like PageRank and personalised search (Hillis *et al*, 2013; Vaidhyanathan, 2012). In this context, the term “political” refers to the impact Google has on power relations in society, both on account of being a multinational company and the dominant search engine,influencing how knowledge is constructed and distributed (Vaidhyanathan, 2012). As a result of the latter, search engines have a profound effect on subject formation and identity when individuals are being searched (Lyon, 2001; Vaidhyanathan, 2012; van Zoonen, 2013). Researchers have problematized Google’s dominant role on the market during the last decade. The question of whether and how Google should be governed by nations or supranations has also been part of this discussion (Dwyer, 2016; Halavais, 2009; Hillis *et al*, 2013; Vaidhyanathan, 2012).

The latest addition to the governing of Google by the EU is the Right to be Forgotten ruling instigated by the European Court of Justice (CJEU). Since May 2014, EU citizens have been able to apply for search engine companies to remove search results of their name if the information is deemed to be irrelevant or in other ways inaccurate. This new policy opens up an empirical possibility for investigating different conceptualisations of Google in the media and how these conceptualisations make possible different actions towards the company. The aim of this article is thus to create knowledge on how Google and Google search are discursively constructed in the debate as a political subject suitable or not suitable for governing.

To accomplish this, I will identify and analyse the political problematisations, in media and blogs, of the ‘Right to be Forgotten’ ruling, which emerged during the period 2014-2016. I will also discuss how these problematisations challenge or add to common conceptualisations of the company and its search engine. The results will build towards a greater understanding of how large internet companies such as Google can be subject to governing.

This study concerns technologies that most of us use every day and which are incorporated in our way of life. Few of us understand the technology or the policies behind such tools as Google search, which limits the way users can make informed decisions (Proferes, 2016). News articles and blog posts are important media for mediating and explaining information policy issues that affect the public. However, such reporting builds upon existing discourse and may reinforce power structures. Therefore, it is relevant to examine the framing of ‘problems’ that a certain policy is set to resolve.

Focusing on the debates in media and on blogs on a policy proposal that affects Google is one way of rendering Google visible (Haider, 2014).The study focuses only on visible search results, not commodification of personal information, i.e. implicit or explicit harvesting of personal information that is being sold to advertisers.

First, the study is framed through a review of relevant literature on the politics of search engines and searching (Section 2), followed by a presentation of my methodological framework (Section 3). Using a Foucauldian discourse analysis, it is possible to analyse the different problematisations of the policy and how Google is conceptualised in these (Bacchi, 2009). Then, the results are presented, focusing on how Google the company and Google the search tool are politicised in the discourse, as well as how Google is conceptualised as a judge of moral character (Section 4). Thereafter, the results are discussed in relation to earlier research with regards to the framing of the ruling as a way of giving power to individuals over companies. This notion is challenged (Section 5) and finally, conclusions are drawn.

# 2. The politics of Google and the effects of search

Before describing the RTBF ruling in more detail, relevant research on the politics of Google and on the effects of search are discussed.

## 2.1 Information politics

From a social-constructionist perspective, search engines are never neutral, objective tools for information retrieval. Introna & Nissenbaum discussed already in 2000 how biases in search engines might limit the web and its use in society, something they identify as a political problem. Halavais writes how search engines become invisible in our everyday life; it is something we use without reflecting on the limitations of these tools. He argues, as well as Vaidhyanathan (2012) and Hillis *et al* (2013) that search engines, with Google as the major example, forms our understandings of knowledge. In 2009 Halavais writes that our culture has a common assumption of search engines: “/…/that a search engine will lead someone to a page that contains accurate information, and that questions are best directed first to a machine and only after that to other people” (Halavais, 2009:1). Through biases in their infrastructure, search engines contribute to forming our understanding of identity, knowledge and the world. For example, a bias can be how search results are presented according to relevance, which affects what we perceive as important. In other words, search engines are political and the commercial companies behind them have great influence over how we perceive the world (Introna & Nissenbaum, 2000; Halavais, 2009; Vaidhyanathan, 2012).

Monica Horten (2016) writes that there are two different perspectives or narratives in an information policy discourse, highlighting the conflicts between various actors such as Internet companies and governments. The first narrative is the “market-led perspective of policymaking”, where governments aim to construct policies that maintain a good relationship with the large Internet corporations that use lobby organisations to put forward their views. The other is the user-empowerment narrative that is working for an open Internet, lobbying for free speech (Horten 2016). However, the user empowerment narrative is complicated when taking into account that users have difficulties in understanding the technologies and business models of platforms (Proferes, 2016). It is also problematic for a researcher to capture all the complexities of global social media platforms since Google is both a major political player and a technology that changes how we perceive the world and ourselves (Vaidhyanathan, 2012).

### 2.1.1 Google as a political subject

Google has been both criticised and praised for its dominant role. The company has been criticised for being too pliable to demands from the Chinese government to filter search results, for distributing users’ search records to the US government, for distributing content without the authors’ approval and for contributing to bias, where Anglo-Saxon culture is favoured through the PageRank system (Diaz, 2008; Halavais, 2009; Hillis *et al*, 2013; Vaidhyanathan, 2012). Vaidhyanathan (2012:110) argues that rather than the content, it is Google’s distribution of information and the terms of access and use, the default settings, that is the dominant form of cultural imperialism.

News media play an important role in influencing public opinion as well as the policy agenda (Shahin, 2016). Google has been praised in the media and Shaker argues that trust in Google may be fostered through media reporting on the company’s fiscal success. Hoofnagle shows how the privacy rhetoric of Google representatives is vague in news articles. These findings suggest a discourse where Google is identified as a successful company in the press, thereby not relevant to criticise, along with a tendency to not discuss privacy issues in depth (Shaker, 2006; Hoofnagle, 2009). The RTBF may provide a discursive intervention in that it makes issues such as personal data and privacy ‘newsworthy’ possible to discuss in the media, on a scale that hasn’t been done before.

One of the key issues that affect how Google is discursively constructed is national regulatory frameworks and the way search engines can affect people’s lives. Historically, Europe and the US have had different approaches to privacy legislation, where the EU approach is pre-emptive regulation and the US model is self-regulation (Zimmer, 2013). This makes for an antagonistic situation when European institutions make legislation that affects Internet companies from the US. The EU’s new general data protection legislation, in which the RTBF is included, is a relatively new attempt to regulate the Internet on a European scale. However, Google has complied with the laws of other nations before, such as the national hate speech laws in Germany and France (Halavais, 2009; Hillis *et al*, 2013).

### 2.1.2 Implications of search on the individual

Another key issue that becomes visible when discussing Google search is the effect on the individual who is being searched and who might use the RTBF or, put another way, how Google’s role is understood in relation to the individuals being searched.

To understand the discourse on the RTBF ruling, it is important to consider the reasoning behind the policy. This study focuses on a limited kind of search, namely, searching a person’s name. Our digital identities are, according to Dwyer, “perhaps the most valuable assets we own” (2016:78). This means that the search results for our names can have great effects on our lives. As personal information is stored for an indefinite future, it is almost impossible to allow the errors of youth to fade away (Halavais, 2009). Vaidhyanathan suggests that the notion of privacy in relation to Google search stands for a desire to have some control over our reputation online.

Privacy should not be seen as the nature of information shared, but the ‘terms of control over information’ (Vaidhyanathan, 2012:93). On a more abstract level, when someone searches your name, he or she will retrieve search results that together build an understanding of who you are, what you have done and perhaps even what will become of you in the future. Many different search results from a whole lifetime, maybe even regarding different persons, are melted into one body. For example, a search result also constructs identities through personalised searching, in ways that the person being searched for is unaware of since the results depend on the person doing the search (i.e his/hers previous searches). Google search can thus be seen as an unintentional tool for disciplining individuals.

Sociology professor David Lyon has written on the ethical aspects of modern technology and surveillance. His solution is an ethical stance for the researcher, who should always consider the material effects for individuals when discussing issues such as privacy and surveillance on the web. Discriminating structures for different groups exist both on and offline and may even be reinforced online (Lyon, 2001).

Google search opens up for *horizontal surveillance*, where peers are watching peers, and because this can have an impact on both social and work relations on an individual level and on a collective level, it can change the online behaviour of groups (Bennett & Parsons 2013). Horizontal surveillance can also lead to public shaming of people who are (perceived as being) guilty of moral wrongs (Ronson, 2015). In the discussion on who is watching whom, with technology that is capable of total remembrance, another alternative is to be forgotten, which the RTBF ruling is aiming toachieve. Other suggestions have also been put forward, such as setting expiration dates on information stored in digital memory (Mayer-Schönberger, 2009). Even though ethical aspects are not at the centre for this study, it is a relevant background for understanding the discussion of what is at stake, when concerning the right to be forgotten, namely people’s right to privacy in relation to freedom of expression.

## 2.2 The Right to be Forgotten

It was in the C-131/12 ruling that the RTBF was recorded in a legally binding document for the first time. Before being incorporated into policymaking, it has been a concept coined and discussed by academics, as Schidermair (2015) shows in her informative overview of the law.

The European Court of Justice instigated the RTBF ruling in May 2014 (C-131/12). It concerns the right of the individual in the EU to request removal of personal data from access via search engines; personal data is defined as ’any information relating to an identified or identifiable natural person’ (Regulation 2016/679). Unless otherwise stated, the Right to be Forgotten and the abbreviation RTBF in this article refer to the C-131/12 ruling and not to the general principle of the right to be forgotten on the Internet. The RTBF ruling means that search results can be deleted if they are deemed to be inaccurate but also ‘inadequate, irrelevant or excessive in relation to the purposes of the processing, that they are not kept up to date, or that they are kept for longer than is necessary unless they are required to be kept for historical, statistical or scientific purposes’ (C-131/12, § 92). Any citizen of the EU can request that a search result for their name be removed, including personal websites and newspaper articles. It should be noted that no information is removed or erased through this policy, only it cannot be found through search engines when searching one’s name. However, the same source, for example, a news article, can still be found if other search terms are used. If a company does not follow the ruling, the EU will fine them. The ruling has been criticised for being ineffective and for destroying the Internet, but it has also been praised for granting individuals their right to privacy.

Google has explicitly stated that the company is against the ruling since it is seen as being a threat to the company as well as the freedom of the Internet, but it has still enforced the ruling. A form is available through Google with which individuals can apply for the removal of search results; Google employees then assess the case based on the criteria made in the ruling. It is also possible to appeal against the decision. Public figures are exempted from the RTBF but the definition of a public figure according to Google is not transparent (Schiedermair, 2015).

At first, only the search results on European sites were removed; they still existed on Google’s non-European sites. But since early 2016, Google has started to block results from all of its domains if searches are initiated in Europe (Gibbs, 2016). Many lines of conflict are emerging in the ongoing debate on the RTBF, such as freedom of expression and freedom of the press versus the right to privacy, the differences in information policies between the EU and the US, and the power of private companies such as Google versus national and international law. This is also visible in the media. In a study on media coverage of the RTBF in the US and the UK, the ruling was discussed in five broad terms: US versus EU, censorship, free market versus regulators, cause and practicality, meaning how the ruling should be implemented (Shahin, 2016). Shahin’s broad overview of the debate will be supplemented by my analysis, limiting and deepening the scope to Google as a political subject.

# 3. Problematisations as an analytical tool

A theoretical assumption for this study is that the RTBF ruling and the ensuing debate concern the limitations and possibilities for Google as a political subject to be governed.

As earlier research suggests, Google must be understood as both a global company in a political-economical context and as a technology that affects people’s identities. To understand Google theoretically through the RTBF ruling debate, I have used Foucault’s concept of problematisations,i.e. investigating how an issue becomes a problem that needs to be solved (or not) through a specific policy. By identifying and analysing problematisations, the researcher can make visible the conditions that make certain problematisations possible (Foucault, 1992). Problematisations are part of a discourse, for this study discourse refers to ‘socially produced forms of knowledge that sets limits upon what it is possible to think, write or speak about’ (Bacchi, 2009:35).

Political scientist Carol Bacchi (2009, 2012) has developed a methodology based on Foucault’s notion of problematisations, focusing on how governing (ruling) takes place. In a policy analysis, this means that a policy is not a solution to a given problem; instead, it is a way of representing a problem that can or cannot be solved by the policy. This is a broad approach to policy analysis and suitable for this study where the political aspects of large companies such as Google are seen as being important in order to understand power relations in society. In using this methodology, the aim for the researcher is not to assess if and how the RTBF is a correct solution to a problem, but to identify how and why the discourse makes different conceptualisations of Google possible.

Following Bacchi (2009), I am interested in how governing takes place by way of problematisations through two themes. The first is the assumptions underlying the problem representations in the discourse, which are not only those of the RTBF ruling, but also include the representation of the problem from the position that is against the ruling. The second theme concerns the effects that are produced by the problem representations in the discourse, focusing particularly on the ways in which subjects are constituted in the discourse (Bacchi, 2009).The intentions behind statements made by authors are irrelevant; it is the statements themselves that are studied as parts of a discourse. To concretise, in the debates following the RTBF ruling, statements were made from different *subject positions* made available through the discourse (Google employees, pro-privacy academics etc.) which, in debate or opinion form, recommend how Google, individuals and the EU should act.

The analysis was done through close-reading of the material (presented in the next section) and identifying different representations of the problem that the RTBF will or will not solve in the debate. These problem representations structure the results section. I have also identified nodes, which means central concepts that are ascribed certain definitions or values by different subject positions. Global enforcement is one example of a node but the most evident one is Google, that is conceptualised in different ways through different problem representations. Another task was to identify positions that were made possible in the discourse for different subjects. Two examples of subject positions *that made statements* in the discourse are Google employees and academics; two examples of positions that *statements were made about* are innocent and guilty bodies. Through the analysis, it will be possible to discern presuppositions and assumptions that are taken for granted in the discourse, and statements that are contested by different subject positions. The results will identify and analyse the struggle between different subject positions regarding how Google should or should not be governed.

## 3.1 Material

The empirical material consists of articles and opinion articles published in British and American newspapers, press releases from politicians in the European Parliament, and blog posts by academics, lobbyists and Google spokespersons published 2014-2016. Fifteen articles have been retrieved, ten had been published in newspapers in the US and five in the UK. Eight blog posts have been retrieved and four other text categories, a parliamentary report, press releases and the Google advisory council’s report have been included. The majority of the authors or people interviewed were academics affiliated with Google, different think tanks or NGOs, or universities. Sometimes the same person falls into all three categories. Politicians and journalists are also featured in the material.

The material consists of different genres published in different contexts and with different genre rules. However, there is genre overlap since many of them make reference to each other: a blog post can also be an opinion piece, a blog can be quoted in a news article and vice versa. One benefit of the variety of genres is that it becomes possible to follow how, for example, Google employees express themselves in different venues for different audiences. It can be assumed that Google employees would want to speak with one voice about the company and the search engine (compare Hoffmann *et al*, 2016:3).

The aim is not to give a full picture of the debate but to discursively analyse a section of it, which focuses on the RTBF in a given period (2014-2016) and place (the US, the UK and to some extent the EU). The material has been retrieved through keyword searching on Summon, Google, and on websites such as that of the European Parliament, different party groups in the parliament, and newspaper websites. The irony is not lost on the author that Google is needed as a tool for doing research on Google. In fact, it would be impossible not to use Google since many website search tools are provided by the company, as is the case with the British newspaper *The Guardian*. The keywords have been: *right to be forgotten*, *right to be delisted* and *Google Spain judgment*. Material has also been retrieved through references made in the texts. Only opinion pieces and longer articles with interviews have been included and therefore shorter news articles or news items only referring to the ruling without interviews or comments have been excluded. The blog posts selected for analysis were authored by either Google employees or academics specialised in the fields of information, law and privacy. Blog posts were included in the material so as not to exclude a large arena where the discussion on the ruling took place. For example, Google used its own blogs to make statements and the London School of Economics invited scholars to write guest posts on the issue (Fleischer, 2012; Goodman, 2015).

The texts chosen for analysis can all be described as ‘practical texts’, i.e. texts that instruct or argue for how, in this case, Google and/or the individuals affected by the ruling, should act (Foucault, 1992). Some biases should be noted: first and foremost, only texts in English have been analysed but the RTBF has also been hotly debated in France and Germany. Germany is an interesting case with a history of being sceptical towards Google (Vaidhyanathan, 2012:102). Another bias is that the majority of the authors are scholars, which frames the discussion in an academic setting. However, this is a result of the ruling being developed from an academic concept and discussed as such in the media. In order for other positions to be represented, interviews could also have been used as material.

# 4. Results

Four different problem representations have been identified in the material: In the first, the RTBF is understood as a solution that gives Google as a private company to much power. In the second representation, the RTBF is understood as an unnecessary solution to a problem not relevant to Google search, which is conceptualised as a neutral tool. Global enforcement is the third representation of the problem, where the question of whether laws of the EU should be applicable for American companies are discussed in relation to the politics of Internet. In the final representation, the imagined users of the RTBF are central, and Google is conceptualised as a judge of character in the discourse. The results section discusses how Google is constructed as a political subject in the discourse through these representations. In the discussion, I will elaborate on what these representations mean for the conceptualisation of Google.

## 4.1 Google as a private company

In the discourse, Google is described as a private company and therefore not responsible for enacting the RTBF ruling; instead, governmental institutions should have that duty. The fact that Google is a company should come as no surprise to the reader, but the ‘Google as a company’ rhetoric highlights a certain problematisation which does not emerge in other discourses on Google. In the material, both critics of the RTBF ruling and its proponents see a problem in that *Google the company* assesses removal requests and not a public institution. This is because a private company cannot and will not have the same kind of transparency as a government institution. Luciano Floridi, who was part of the Google advisory council, says in an interview in the *New York Times*: ‘If Europe really wanted to regain control over personal data, giving Google this type of power is an odd outcome’ (Scott, 2016). A prominent subject position in the discourse consists of academics, active at universities, who work with questions on Internet and privacy. This position also criticises Google for lack of transparency and demands that Google make the process more visible, both for the sake of the public and to be able to use the data for research (Kiss, 2015). Thus, Google is a suitable object for governing both by policymakers and by researchers. Google’s advisory council suggests in its report that RTBF is a misleading concept and instead suggests *the right to be delisted*, which is then used by Google (2015). The renaming of the “right to be forgotten” to the “right to be delisted” can be seen as a way to distinguish the phrase from the academic concept of RTBF, and a way to downplay the impact of the action since delisted does not have the same connotation as forgotten.

Earlier research has shown how Google is constructed by themselves and by users as being neutral, objective and understood as the act of searching for information in itself. An example of this, and of Google’s traits, which made it stand out from other search engines when it first entered the market, was the empty search box, a web page with no clutter. According to Hillis et al, Google represents a kind of ‘magical empiricism’: ‘offering legitimization through a matter-of-fact calculation /…/ which in turn draws on Enlightenment ideals of empiricism and its connection to ideals of progress’ (2013:14). But when the Google as a company-problematisation is used in the discourse, the neutral aspects of Google search become muddled.

The different responsibilities of commercial companies and governments are put forward as an argument both for and against the ruling (Goodman, 2015; Zittrain, 2014). Jimmy Wales, founder of Wikipedia and a member of the Google advisory council argues against the ruling in the council’s report: ‘I completely oppose the legal situation in which a commercial company is forced to become the judge of our most fundamental rights of expression and privacy, without allowing any appropriate procedure for appeal by publishers whose works are being suppressed’ (Google advisory council, 2015:27). Technology researchers Julia Powles & Enrique Chaparro also questions the role of Google, but argues for the ruling in *The Guardian*: ‘Google has acted as judge, jury and executioner in the wake of Europe’s right to be forgotten ruling. But what does society lose when a private corporation rules public information?’ (Powles & Chaparro, 2015). In contrast, the EU frames the ruling as a user versus company conflict.Hannes Swoboda, president of the Socialists and Democrats Group in the European Parliament, said in a press release: ‘This court decision clearly demonstrates the spirit of European data handling: power to the user, not the company’ (S&D, 2014). But Jonathan Zittrain, academic and critic of the RTBF ruling points out: ‘/…/ here state power is being exercised without the involvement of the state’ (Zittrain, 2014). Private versus public and company versus user are two dominant dichotomies in the discourse.

In this problem representation, the RTBF is not contested as such, rather it is the outcome of the ruling: that a private company has responsibility for enacting what is being criticised. Here, both Google employees and academics agree.[1]

## 4.2 Google search as a neutral tool

In contrast to the private company Google, the search engine Google is described as being a neutral tool by employees and some scholars and journalists in the debate. On the Google Europe blog, Peter Fleischer, Google’s global privacy counsel, makes a distinction between ‘services that host content created by people’, exemplified by Facebook and YouTube, and ‘services that point people to content that exists elsewhere’, namely search engines (Fleischer, 2012). However, the RTBF ruling pushes Google search into a more visibly active role as gatekeeper. Larry Page, Google’s chief executive, commented on the result of the RTBF ruling in an interview with Farhad Manjoo:

To date, we’ve said we’ll try our best to represent the things that are out there on the Internet about you. It’s worked for 15-plus years. It makes a lot of sense. We’re a search engine. It seems like we should represent what’s in the world. So it was a pretty surprising ruling — it’s a different statement. You guys are now in charge of editing what’s out there in the world. In the past that’s not a responsibility we felt we had. (Manjoo, 2014)

In the quote, the responsibility of ‘editing’ is described as something new, although Google has removed information such as social security numbers or copyright material for a long time. But even without taking into account these adjustments of search results, the technology of search engines themselves cannot provide “fair and unbiased results” (Lewandowski, 2017). Lewandowski show how Google downplay the power the search engine has over search results, thus ignoring its monopoly status (2017). As a result of the ruling, the editing role of search engines has become highlighted and debated in the media through the problematisation of the RTBF ruling in ways that have not existed before the ruling. Furthermore, there has been a shift in the problematisation of how threats against privacy are perceived since the ruling states that *search engine providers*, as well as website owners, become responsible for privacy violations (Schiedermair, 2015). In other words, it is no longer enough to claim that a search engine only represents what’s in the world, but that the company also has responsibility for the results. This is not a preferred position for Google. Kent Walker, general counsel of Google, said in an interview: ‘We don’t create the information. We make it accessible. A decision like this, which makes us decide what goes inside the card catalogue, forces us into a role we don’t want’ (Toobin, 2014). When comparing Google to a neutral tool or a card catalogue, the ideological aspects of Google, and how the company affects knowledge production, become invisible. In this problem representation, it is the RTBF itself that is rejected and the focus lies on the function of Google search rather than the company.

## 4.3 Global enforcement

The third form of problematisation through which the problem of the RTBF is considered is whether the ruling should be applicable in countries other than the EU’s member states. Global enforcement is a node in the discourse, putting forward a trans-Atlantic conflict in the debate (Shahin, 2016). This also ties into the user-empowerment narrative discussed by Horten (2016). The two following quotes from a journalist at the *Business Insider* and the legal director of the Media Legal Defence Initiative are examples of an understanding of Internet and Google search as being a free flow of information:

Understand that Google didn't write or commission these posts. Google had nothing to do with them. All Google does is index them, along with the billions and billions of other pages on the web, so that people can find them when they search. (Rosoff, 2015)

Today the ECJ has identified the very function of the search engine as a serious threat to personal privacy and data protection /…/ The real loser in this case: the public and the interest in society at large in the free flow of information and ideas. (Noorlander, 2014)

In other understandings of Internet in the discourse, the Internet was never free and is already under the control of different policies and corporations: ‘Internet companies have been successful in making us believe that the Internet is “public space”, when, in reality, it is just an algebraic representation of privately owned services’ (Powles & Chaparro, 2015). Linked to the understanding of the web as a free flow of information is a fear that a local law with global reach will alter the ways in which the Internet is used. Jennifer Granick, Stanford Law School, says in an interview that the RTBF is the beginning of the end of the global Internet: ‘/…/ and the beginning of an Internet where there are national networks, where decisions by governments dictate which information people get access to’ (Toobin, 2014). Law professor Ellen Goodman writes:

The fear of EU over-reaching is that an aggrieved businessman in Milan can control what an interested citizen or journalist sees in New York. More than that, it’s the fear the EU over-reaching will spread to Pakistan and Russia, and that these countries’ strategies for suppressing information will be exported to the global Internet. (Goodman, 2015)

However, Julia Powles argues that global enforcement of privacy laws is not a problem since copyright laws are already in place (Powles, 2015). The different views on the right to be forgotten, in the US and in Europe, have been extensively commented upon, both in the debate and in research. The conflict between Europe and the US can to some extent be explained by the countries’ different bodies of law, where the first amendment in the US protects free speech, while the European Convention on Human Rights in Article 8 concerns the right to respect for privacy (Dwyer, 2016). In the US media, the ruling is understood as something unthinkable in their own national context: ‘The Internet’s unregulated idyll seems to be coming to an end, at least in Europe’ (Toobin, 2014). A note on this conflict is that it is usually described as one between the US and Europe, ignoring the fact that views between European countries and the EU also differ. In the UK, the House of Lords argues in a report on the EU Data Protection Law that the RTBF is ‘misguided in principle and unworkable in practice’ (House of Lords, 2014). Earlier attempts to govern Internet privacy across borders have not been as successful, even though there is no evident ‘race to the bottom’ (Zimmer, 2013). However, the ongoing legislation work in the EU suggests that Internet privacy for individuals is being put forward as a prioritised political issue.

The future of the Internet and the politics of Internet on a more abstract level are in focus in this problem representation. It is also a result of different national legislation in different countries.

## 4.4 Google as a judge of character

Search engines have political implications for how we perceive others and ourselves. Currently, there is a movement towards a fixation of single identities on the Internet (van Zoonen, 2013). On the other hand, there is a need to acknowledge how people are affected by information politics. In the discourse, journalists, academics and Google employees build on real and imagined bodies that are affected by the ruling. There are many reasons for persons wanting to be forgotten by using the new ruling, but in the material, two reasons are identified: being guilty or innocent/a victim. Through this problem representation, Google is conceptualised as being a judge of character in the discourse.

After the ruling, a fear is expressed in the discourse that criminals will take the opportunity to hide their pasts: ‘convicted criminals are among those trying to hide links to stories from online search engines.’ (Harper & Owen, 2014). *The Washington Post* published a news story the day after the ruling with the heading: ‘Does a British pedophile deserve the 'right to be forgotten' by Google?’ (McCoy, 2014). This framing of the RTBF ruling plays on a fear of not knowing the criminal pasts of people. David Drummond, Senior Vice President for Google, writes in an opinion piece that was also published on Google's own blog that:

The examples we’ve seen so far highlight the difficult value judgments search engines and European society now face: former politicians wanting posts removed that criticize their policies in office; serious, violent criminals asking for articles about their crimes to be deleted; bad reviews for professionals like architects and teachers; comments that people have written themselves (and now regret). (Drummond, 2014)

The possibilities for resistance are implicated in the quote, where the ‘elites’ or criminals should be watchable by others. There is an underlying conflict over whether a criminal offence should always be part of a person’s identity or if it should be ‘forgotten’. Google search can be seen as an unintentional tool for disciplining individuals where the investigation and interrogation of an individual are always ongoing. But there are also academics in the debate, such as Eric Posner, who argue against it (Posner, 2014). The human mind and human societies can forget but the Internet cannot and this is an ethic problem representation at the core of the RTBF ruling.

Bodies other than the criminal are used in the discourse to defend the RTBF ruling. Powles & Chaparro discuss search results: ‘They include prominent reminders that an individual was the victim of rape, assault or other criminal acts; that they were once an incidental witness to tragedy; that those close to them – a partner or a child – were murdered’ (Powles & Chaparro, 2015). Other bodies that are mentioned as being in need of the ruling are people wrongly accused of crimes, poor single mothers, widows and people with HIV (Hakim, 2014; Tippmann & Powles, 2015; Powles, 2015). In particular, photos of dead children at the scene of an accident are mentioned (Toobin, 2014). Some examples are moral, for instance, a mother who wants to remove photos of her undressed teenage daughter or an ex-wife who wants to remove records of divorce (Hakim, 2014). While some of the personal information used as examples in the debate had been published by the individual, most had not. Most of the examples are public information that becomes more widely distributed than intended by the search engine society. Zimmer & Hoffman call this ‘a leakage of personal data outside a particular informational context’ (2011:177). The subject position is constructed as being ‘ordinary people’, who suffer from horizontal surveillance. Google’s role as a judge of character through its personalised search is taken for granted and not questioned in the discourse.

## 4.5 Discussion

The results show that there are conflicting problem representations in the discourse that affects the conceptualisation of Google and the possibilities for governing the company. This will be further discussed in this section, including the implications of the ruling for Google as a political subject.

### 4.5.1 How does the search engine become political in this particular discourse?

In the discourse, there is a presupposition that Google should not be responsible for making the kind of assessments that the RTBF ruling entails, by both Google employees and critics of the company. At the same time, there is an assumption by some that Google search is a neutral tool and that the company is a defender of the free flow of information, so there is a conflict in the discourse between conceptualisations of Google the company and the search engine tool. This assumption can also be seen by some journalists and lobby organisations in the debate, where it is taken for granted that Google search represents a section of reality: ‘All Google do is index them’ (Rosoff, 2015). However, as many researchers have argued, Google search is political through design since it produces search results, not mainly reflecting the world as it is (Hillis *et al*, 2013; Vaidhyanathan, 2012).

Horten’s two narratives in information policy discourse (2016), the ‘market-led perspective of policymaking’ and the ‘user-empowerment narrative’, are not enough to understand the conflict in this particular discourse. The different narratives or possible discursive formations are more complex since subject positions defending Google and the interests of internet corporations against the ruling use free speech for Internet users and the possibility for resistance as an argument for their cause. The other position, defending the ruling, also speaks from a user perspective, evoking privacy as a right for the user.

Google has been accused of cultural imperialism and a bias towards Anglo-Saxon search results (Jeanneney, 2007). But following Vaidhyanathan (2012), the problem representation of the RTBF ruling is a way for the individual to take power over companies, and it constitutes a victory for the EU information policy. But since the assessment procedure is not transparent and it is carried out by Google, the power still lies within the technological framework.

The company has been successful in protecting and promoting its brand. Hillis et al conclude their investigation of the culture of Google search by reflecting on the ideal of Google to be an all-encompassing “thinking machine”, giving answers that machines currently cannot provide, such as predicting future events (Hillis *et al*, 2013:199-203). This conceptualisation of Google as an all-encompassing vision is challenged by the RTBF ruling through exposing the possibilities for editing and adjustments of search results. But Google can still uphold its ‘magical empiricism’ by concealing its judgements and related data from researchers and the public.

The search results affected by the ruling are politicised in the discourse and have subjectification effects for the individual. With this problem representation, Google is constructed as a judge of character in the discourse by, producing search results of individuals, for example evidence of criminal activities that needs to be public to keep us safe, meaning that those who want to have a search result forgotten are guilty, or search results that are described as being a result of grief or shame for an innocent person which that person wants to hide. As has already been mentioned, horizontal surveillance aspects of search are an assumption in the discussion on criminal bodies.

In texts defending the ruling, there are a lot of stories about material effects for individuals that have been bullied or in other ways exposed to negativity through search results. All the examples are anecdotic and do not take into account larger power structures in society. For example, women are more vulnerable to strategic attacks on the web, not least through ‘revenge porn’, which is now illegal in many countries. Search engines make horizontal surveillance possible without social consequences for the searcher while the consequences for the individual whose personal information is made available online may be ‘/…/the inability to work, the persistent psychological fear of stalking, the dissemination of intimate facts that lead to harassment /…/’ (Bennett & Parsons, 2013:496). The fact that other laws cover discrimination against groups may be one reason why this is not mentioned in the discourse on the RTBF. The examples also focus on individuals and not groups.

An underlying but not explicitly stated assumption is that people who can benefit from the ruling are socially vulnerable due to poverty. An implication of the findings for online information is that the ruling can be seen as a way of giving power to individuals. But, as will be discussed further in the next section, the power still lies within the domains of Google. The ruling can also be used as an act of resistance towards the development of fixating single identities on the web (van Zoonen, 2013).

However, this is not done by challenging the presupposition that your search results are the real you or that Google search can be used as a judge of character. There is an implication in the discourse that one should not be judged by single errors made in youth, thereby building upon an idea that there exists an authentic identity or personality that can be put forward when removing false or embarrassing information (van Zoonen, 2013). This problem representation is uncontested in the discourse.[2]

### 4.5.2 Implications for Google as a political subject

Due to the selection of material, there is a presumption in the debate that it is mainly articles in newspapers which individuals want to have removed from search hits. The fact that search engines and their algorithms have effects for media production is not new (Dwyer, 2016), but in the debate, many journalists argue that Google search produces a neutral results list and as such, the RTBF ruling can be understood as tampering with the freedom of the press. Content restriction on the Internet, whether by companies or governments, is a highly ideological issue. The RTBF is an example of a safeguard measure but the power still lies within the Internet companies. In the case of the RTBF ruling, both advocates and critics of the ruling have questioned Google’s mission to assess removal requests but it has not been discussed in the debate by representatives from the EU.

# 5. Conclusion

I have done an analysis of how the RTBF ruling has made possible different conceptualisations of Google.

To conclude, my findings indicate that Google is constructed as a political subject through the ruling as it makes Google’s power over knowledge production visible in the discourse. In the discourse, Google is conceptualised as a commercial company, a neutral facilitator of the world connected to the freedom of the Internet and as a judge of character.

Critics of the RTBF describe the threat to Google as coming from policymakers; it can be seen as a reaction to political governance that is perceived as affecting the status quo of Internet use. Thus, the critics do not take into account the fact that the Internet has always been governed and that the practice of searching is dynamic. In many ways, Google and the technology of Google search have been constructed as neutral and objective in the discourse, but a consequence of the ruling is that Google’s advisors and executives are now pointing out that Google is a private company that is not required to be transparent and accountable in the way that governments must be. An interesting dynamic in the result is that Google is framed as both a commercial company and as a neutral facilitator of the world. These different conceptualisations have effects on how the Internet should be governed, i.e if Google is understood as a neutral tool, then no governance is needed. If Google is understood as a commercial company, then governance may be needed of the company but, most importantly, the company itself shouldn’t be in charge of governing.

In the media reporting of the ruling, individuals affected by the ruling are constructed as either guilty or innocent. An assumption in the discourse is that Google search can and should reflect a single fixated identity and that the search engine provides a judge of character. Those who are for the ruling argue that the individual, with the aid of the RTBF, can manage his/her identity while those who are against the ruling argue that activities such as crime should be part of one’s digital identity, implying the possibilities for social control.Protecting privacy, through a right to be forgotten, is constructed as something for which governments should be responsible, not companies.

From a researcher’s viewpoint, the debate is an opportunity to deepen the layman’s understanding of Google. The ruling is framed as giving rights to individuals over companies but since the technological infrastructure of Google has not changed and since the assessments procedures of Google are not transparent, the company still holds the power. The implications for online information is that the hegemonic role of Google is, if not disturbed, at least coming into public view through the RTBF ruling. The ruling does give individuals the possibility of reputation management, while also opening up for a discussion on who has the right to be forgotten. Paradoxically, the ruling and the ongoing debate have made the politics of Google visible, as well as giving the company more power in judging knowledge dissemination.

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[1] For a discussion on different possibilities to be forgotten or deleted on the Internet, see Mayer-Schönberger 2009.

[2] For a discussion on ethical aspects of Google, see, for example, Diaz 2008; Hinman 2008; Hoffmann 2016.