

“The Economics of the Right to be Forgotten”
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January 2016

Research Question

Controversy stemming from differences in perceptions of rights

- French law of *le droit a l'oubli*: a convicted criminal has a right to oppose the publication of criminal history after serving time
- U.S. First Amendment protects freedom of speech and freedom of press

Socially Optimal

- Balance between:
 - individual harm from search results deemed defamatory or embarrassing
 - social harm from loss of information (e.g., sex offender registry lists, payments to physicians)

What is the impact of expanding the right to be forgotten?

Economics of Privacy

Two reasons that an individual might prefer privacy (Hermalin and Katz 2005)

- to conceal information that a potential trading partner may take advantage of
 - Privacy is inefficient – Chicago School (Posner 1981, Stigler 1980)
 - prevents matching benefits (e.g., to employ someone without criminal record)
 - informational asymmetries
 - discourage productive investments (e.g., to avoid being a criminal)

Social Image

- a taste for privacy *per se*
 - the provision of privacy can be efficient in the second instance
- ⇒ This paper seems to be talking about accommodating these tastes
 - Rather than some efficiency rationale pertaining to investment to obtain information

Empirics of Privacy

Stigmatizing effect associated with a criminal history

- Individuals with criminal records are more likely to experience job instability and wage decline (Waldfogel 1994; Nagin and Waldfogel 1995)
- Employers use criminal records to screen candidates (Bushway 2004)
- On the other hand, likelihood of recidivism declines with time spent without committing a crime, and at a certain point in time, an ex-offender who has remained “clean” can be regarded as providing no greater risk than a non-offender counterpart of the same age (Blumstein and Nakamura 2009)
 - Privacy could encourage non-discrimination and investment in rehabilitation
 - Or, there continues to be economically relevant reasons for why these candidates wouldn't be hired

Equal Employment Opportunity

- In most of the US, an employer who asked about the religion or marital status of a job candidate risks getting sued
- But nothing prevents an employer from looking it up

Legal Dispute Game

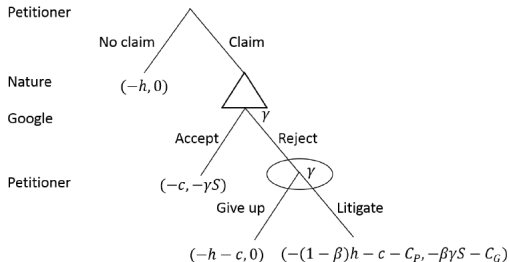
Search engine has private information about its loss (to the users who lost this information)

- Q: How? Typical internalization is via users' willingness to pay;
- Q: Why would search engine have private information about social loss?

Petitioner can request removal at some fee

- If rejected, can proceed to litigation
 - At sufficiently low fee, petitioner always requests
 - If petitioner harm is large, litigation always ensues
- Probability of link removal summarizes the users' loss
 - => Expanding the right to be forgotten entails larger social loss so the search engine will be more likely to reject claims, leading to fewer links being removed
 - This effect dominates the greater desire by petitioners to win (because litigation occurs on a subset of rejected claims)
 - Q: If so, why wouldn't the petitioners decouple their link removal requests to only remove the (European) links?

Model



- P alleges harm h paying court fee c
 - Q: actual, not alleged?
- Defendant loses $L = \gamma S$ if comply
 - Q: Why are L , S , and γ needed?
- Defendant has beliefs over γ and likelihood of prevailing $\beta = g(h, \gamma, S)$, g is common knowledge
- P's strategy: $\Pr(\text{claim})$ and $\Pr(\text{Litigate})$
- Defendant plays cutoff strategy
 - If only the lowest types accept, then petitioner always litigates
 - If only the highest types accept, then petitioner litigates with probability

Analysis

Comparative Statics

$$Pr(\text{"link-removal"}) = \overbrace{F(\gamma_G^*)}^{(1)} + \underbrace{(1 - F(\gamma_G^*)) g(h, \tilde{\gamma}(\gamma_G^*), S)}_{(2) = Pr(\text{"lawsuits"})}$$

- Expanding the right to be forgotten increases S (an assumption, though you could also argue with less noise, it's easier to find content)
- Search engine will be more likely to reject claims: (1) falls, which dominates (2)
 - Q: Seems to come from smoothness in $g(\cdot)$? What if you allow a mass of petitioners to suddenly litigate now that U.S. links are also removed?

Efficiency

- If the S loss is high enough, the defendant may accept inefficient claims
 - Q: Everything is stated in terms of γ , but I assume this is coming from litigation costs being high enough, then the defendant accepts inefficient claims
 - Q: Ex-post social welfare is given by $-(\gamma S + S)$ if the links are removed, and by $-h$ otherwise

Comments

- Is there something different in this context vs. litigation with decoupled payments and decoupled fees? (cf. Kaplow, etc.)
- “expanding right to be forgotten can enhance or reduce welfare, **therefore**, debate should be guided by perspective of what’s socially optimal”
- “Proposition 6 suggests a **testable** empirical prediction.”
- Why do some countries prioritize right to privacy?

Summary

- Important Paper
- Little has been done