Abstract

This article proposes a new conceptualization of the right to be forgotten, arguing in favour of its theoretical construction and concrete application under the umbrella of the right to identity. Following this perspective, I intend to shed new light on the right to be forgotten, contributing to a more developed conceptualization and enforceability while clarifying its scope of application. Based on the distinction between the right to identity and that of privacy, the paper presents the advantages of associating the right to be forgotten with the right to identity. Through this identity-oriented conceptualization, I claim that the right to be forgotten should also be applied to user-generated content and information processed for personal purposes, overriding the ‘household exemption’ established in the European Data Protection Directive. I also argue that the right to oblivion, framed as part of the right to personal identity, should address public facts and information, providing a stronger rationale and justification to attain a better and fairer balance with the competing right to freedom of information. The article then comments on the most relevant conflicts that the right to be forgotten will have to address vis-à-vis the freedom of expression and the need to preserve social memory. As a branch of the right to identity, the right to be forgotten is presented as the right to be different, not from others but from oneself, i.e. from the one(s) we were before. The right to be forgotten also underlines the process of identity creation as not only constructive but also deconstructive.

Keywords

Right to be forgotten, right to personal identity, privacy, data protection.