

REMEMBERING, FORGETTING, REINVENTION AND FREEDOM: SOCIAL MEDIA AND CHILDREN'S RIGHT TO BE FORGOTTEN¹

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People often say, “Forget I mentioned it” when they realize that their message has been poorly received. Whether in response or by virtue of the frailties of human memory, it is possible, and even likely, that the other party to the conversation actually *does* forget the message originally conveyed. The same cannot be said of messages communicated via the Internet, where nothing is ever truly “forgotten”. The memory of the Internet is not susceptible to the frailties of the human mind. Its memory is infallible, boundless and amaranthine.

Facebook used to provide each of its users with a “Wall”. On this Wall, users could post comments, links, photographs and videos, and allow others to do so. That Wall is now coined a “Timeline”. This name change is significant, and more accurately reflects the nature and purpose of this social media feature. The purpose of a *wall* is for the posting and publication of selective and important information. A *timeline* denotes a linear and uninterrupted memory, or a “continuous stream”² of information. On Facebook, this digital Timeline manifests itself as a chronological record of a Facebook account holder's online life. Items that account holders voluntarily posted ten years ago now appear on their Timelines without request, to remind them of good memories and friendships, as well as embarrassing events and even failed relationships. These throwbacks may haunt users with information they had intended for themselves and for others to forget.

Today in North America, it is rare to come across anyone who has not used or at least come across social media. As of 2016 almost two-thirds of Canadians had their own social media profiles, and those Canadians who used Facebook spent an average of 40 minutes per day on the social network.³ Only sixteen per cent of Canadians say they have never tried using Facebook.⁴ As of August 2017 Twitter had 328 million monthly active users.⁵

The Dalai Lama has a Twitter account. Former U.S. president Barack Obama is number three on the list of top ten “twitaholics” according to *twitaholic.com*, with 92 million followers, almost twice as many as Kim Kardashian West has. Each minute, 300 hours’ worth of new video content is uploaded to YouTube.⁶

Those who have never experienced life without the Internet (a group whose members are known as “digital natives”⁷) are savvy online. This is unsurprising considering that children and young adults⁸ are very heavy users of the “world wide web” and social media. One study in 2014 found that Canadian students⁹ almost universally have access to the Internet, with ninety-nine per cent of children getting online outside of school. Just under a third of ten- to 12-year-olds have a Facebook account, while sixteen per cent of them also have a Twitter account. By the time the children reach Grade 6, sixty-seven per cent have Facebook accounts, and this number increases to ninety-five per cent when they reach Grade 11. Almost half of youths between Grades 7 and 11 are Twitter account holders. Thirty-eight per cent of Canadian students report that they have posted online a story or a piece of artwork they created, and thirty-three per cent have posted a video or audio clip of themselves.

Many of today’s digital natives make their entrance into the realm of social media very early, sometimes before they are even born. According to one study,¹⁰ approximately eighty-four per cent of Canadian mothers admitted to uploading images of their child online, before their child turned two. Even more astonishingly, eight out of 100 mothers have created social network profiles for their babies, and nine out of 100 mothers have registered e-mail addresses for their babies.

These social media platforms provide invaluable tools for communication, networking, information dissemination and self-expression. However, how many of the some 32 million Canadian Internet users¹¹ have fully considered the tenacity and infallibility of the Internet’s memory? How many have considered publicly posting content in light of the Internet’s “digital eternity” or “digital oblivion”¹²? And not just for “posts” or “tweets” that users actively release into the universe, but also the plethora of information that is collected quietly in the background without any active user participation?¹³ Facebook and Google both use mathematical algorithms to examine closely the online activity of each Internet user, in order to personalize the content that each individual user sees, including ads and other users’ posts.¹⁴ Users of Amazon have invariably seen the section entitled “Inspired by Your Browsing History”.

THE RIGHT TO BE FORGOTTEN

A 2014 legal proceeding from Europe, resulting in what is often referred to as the *Google Spain* decision,¹⁵ has brought much attention to the issue of whether one should have the “right to be forgotten” online. The story behind that case involved a lawyer, Mr. González, who “googled” himself and found links to two newspaper articles that described how he had defaulted on a social security debt and how, as a result, his house was repossessed and advertised for sale. Mr. González wanted to live his life without this information in the digital realm. He wanted the articles to be “forgotten”, or de-indexed from Google search results.

Mr. González succeeded against Google Spain and Google Inc. at the Spanish Data Protection Agency. Google challenged this decision in Spain's National High Court, which in turn referred legal questions to the European Court of Justice: namely, the meaning of European law regarding the protection of individuals and the processing of personal data. The European Court of Justice held that pursuant to the right to be forgotten, search engines such as Google have an obligation, in some circumstances, to remove links to personal data that are *inadequate, inaccurate, irrelevant or excessive*.

Subsequent to the *Google Spain* decision, Google launched an official request process on May 29, 2014, which allowed individuals to seek the removal of certain Google search results about themselves from European Google search domains, such as google.fr and google.es, but not search domains outside of Europe, such as google.com. Since then, Google has received more than 1.8 million requests for URLs to be delisted and has de-indexed 43.2 per cent of these URLs, including, most frequently, Facebook, YouTube and Twitter pages.¹⁶ Bing and Yahoo have also been processing requests since 2014.¹⁷

Since the *Google Spain* decision, many countries within and outside of the European Union have considered or adopted the right to be forgotten.¹⁸ Since 2014, there has been much debate surrounding its adoption in North America. Some vehemently oppose the adoption of the right in North America; others contend that we should approach it with great caution on this side of the world.

In most of the North American discourse, the debated issue is how the right to be forgotten should be weighed or balanced against the freedom of expression and information. But have we concluded prematurely that forgetting is indeed the nemesis of free expression? If freedom of expression exists to protect, at least in part, our rights to self-actualization and self-fulfillment, isn't some forgetting necessary?

Should the memory of the Internet be modelled after human memory, especially in the special context of social media? More specifically, should

the answer to this question be different when *young* Internet users are involved, given that (1) they are undoubtedly different from their adult counterparts,¹⁹ and (2) it is not always clear whether they have consented to the provision and collection of their private information, especially where their parents have alerted the Internet of their existence even before birth?

WHAT MAKES CHILDREN DIFFERENT?

Children are different from adults in many developmental, psychosocial and behavioural respects, and their identities undergo substantial revision and reinvention as they mature. Canadian law treats children differently from adults in most circumstances due to the recognition of these inherent differences.

A number of neurological developments take place during childhood, and some even well into early adulthood. Importantly, the brain's executive control and planning centre, the prefrontal cortex, located in the front of the brain, takes the longest period to develop fully, often not until an individual is in her mid to late 20s.²⁰ The ability to self-regulate goes hand in hand with brain development. As children grow, they learn to conform to external expectations of acceptable behaviour. The executive control and planning centre of the brain contributes to a person's ability to control impulses, plan and coordinate purposeful actions.

Teenagers are particularly vulnerable to taking risks, as the development of their planning and risk-avoidance faculties has not caught up with their tendency to seek rewards. People tend to become less impulsive as they mature, as their executive and self-regulation functions develop. This occurs steadily between the ages of ten and 30. However, between the ages of ten and 15, there is a spike in a person's tendency to seek out rewards and incentives. Although reward-seeking behaviour generally decreases after age 15, there is some overlap in the early teenage years when children generally have both high reward-seeking behaviour and high impulsivity.²¹

What this means is that young people may be more likely to take risks with respect to their personal information on social media, especially if they are rewarded when they disclose their personal information. For example, a teenager who sees the number of "likes" he or she gets on Facebook as a yardstick for popularity is more likely to share personal photographs, videos or information in order to garner more "likes".²² Increasingly, before reaching adolescence, children across the globe exert peer pressure on each other to use social media as a method of communication.²³ According to

some, children between nine and 14 years of age have more online connections than interpersonal connections.²⁴

The way that social media platforms are set up also encourages young people to reveal more personal information, since the number of connections they have serves as a barometer for their popularity online.²⁵ For example, YouTube provides thumbs up or thumbs down icons for each video for viewers to select, and Twitter makes visible the number of “re-tweets”. Facebook’s private messaging app, Facebook Messenger, makes the sender of the message aware of the time at which the recipient viewed the message, exerting a pressure on the recipient to respond quickly. Some teenagers have reported a need to be available via social media all the time and feelings of anxiety about missing out if they do not respond immediately to messages or posts from others.²⁶

Digital natives also face challenges arising from a new social media phenomenon: their parents and third parties are posting their personal information online while the digital natives themselves are still too young to consent. Proud parents (or soon-to-be parents) often share sonograms or photos of their newborns online. This practice is socially acceptable in Canadian society.²⁷ However, it may take years before a child who is featured in a bathtime photo begins to understand what it means to have her information online. In many jurisdictions, a child’s guardian must, legally speaking, consent to the disclosure and use of that child’s private information on social media. However, one might question whether a new parent’s public excitement about the birth of his child is completely aligned with the best interests of that child.

Despite the increased vulnerability of children online, they generally have more limited recourse than adults have when it comes to rectifying an online privacy intrusion or enforcing a privacy right. A child who objects to the existence of certain online information about them has limited legal options. To begin litigation or to make a complaint to the relevant privacy governance body, a child generally needs an adult to serve as the guardian *ad litem*. Even where children have brought complaints through their litigation guardians, one hurdle they often encounter is in identifying property or financial damage.²⁸ Children who decide to bring actions once they reach adulthood may face further limitation issues.

Furthermore, surely society does not subject children to the same standard of judgment as adults. Accordingly, in circumstances where embarrassing information has been posted about a child online, should we not cut that child some slack and, in some circumstances, forgive and forget the blunders of their past?

REASSEMBLAGE ERROR AND THE MR. POTATO HEAD METAPHOR

The result of the disclosure of personal information for digital natives online—sometimes with limited or no privacy settings—is that by the time they reach adulthood, there is already a tremendous amount of information about them online, which they and others around them shared voluntarily. This information is in turn often readily accessible to anyone who is interested. Furthermore, third parties often share, comment on and save social media content, providing another avenue for later recollection.

Many universities in the U.S. admit to reviewing social media sites during their assessment of student applicants. Some report that what they saw negatively affected their evaluations.²⁹ More than fifty per cent of employers who conducted searches of potential employees on social media decided not to hire the applicant due to something they saw on the applicant's social media.³⁰ In the personal sphere, a third of those with recent dating experience who use social networking sites have conducted research about someone they were interested in dating on social media.³¹ When an individual has a significant online presence, mainly through social media, a third party may collate pieces of information about that individual, from the present and past, irrespective of the intended audience, and use that information to create a conglomerate identity that misportrays the real person.

The “Mr. Potato Head metaphor” illustrates this phenomenon. For those of us who never had a Mr. Potato Head toy and never saw a movie from the *Toy Story* franchise, a Mr. Potato Head is a plastic toy in the shape of a potato, which has detachable arms, legs and facial features including a mouth, a nose, eyes and ears. The whole set of parts usually comes in a bucket. Quite often, the bucket containing Mr. Potato Head's parts also comes with a number of other accessories such as a hat, glasses or a moustache. Mr. Potato Head is subject to the mercy of his maker because one can detach everything on him so that he is essentially a potato with holes and then rearrange each of his appendages so that he becomes a bizarre chimera of his own body parts. When reassembled, Mr. Potato Head can have an arm where his ear or nose should be, and a moustache for a leg. While Mr. Potato Head still exists as a sum of his parts, he is no longer recognizable as himself.

Imagine the following scenario: a couple decides to name their soon-to-be-born baby “Maylee”. They announce on Facebook and Twitter that they are expecting and post pictures of Maylee's sonogram on Instagram, adding the text “#Maylee” to connect all posts with this same hashtag. Before Maylee is even born, and without any prior notice or consent, an online identity has been created for her. After Maylee is born, her parents announce her birth on social media and post pictures. In the child's early

years, her parents continue to post photos of her, often in the bathtub, and often accompanied by anecdotes.³² By the time Maylee is old enough to meet the Internet herself, the Internet has already known her for years. It has collated many pieces of information about her.³³ The Internet never forgets this information, but collects and adds every piece to a proverbial Internet bucket-of-appendages labelled “#Maylee”.

As Maylee grows up and interacts with the Internet and social media herself, she continues to add to the bucket from which an image of her identity will be composed. She shares photos on Instagram and via Snapchat; she uses Facebook to share a video for a project; her school uploads a video of her from a swim meet on YouTube; her friends tag her in their Instagram comments. Everything made available online in relation to Maylee is thrown into the “#Maylee” Internet bucket.

At 15, Maylee “likes” a homophobic joke on Facebook and re-tweets lyrics from a heavy metal song about satanic worship. During a hockey-related riot, a bystander taking a video of a burning car unintentionally captures Maylee in the background, laughing, and uploads this video onto YouTube. Later, someone who is watching the video recognizes Maylee and mentions her by name in the video’s comments section. All these pieces of data are now a part of Maylee’s online dossier. Even items that may no longer be *accurate, adequate or relevant* to Maylee’s identity will still exist in this bucket of data.

At 17, she starts to apply for admission into universities. Online searches provide each admissions officer with at least some access to the “#Maylee” Internet bucket, which contains all the express pieces of information about Maylee that the Internet has relentlessly collected and stored over the years. Each admissions officer performs the task of reconstructing an understanding of Maylee’s identity through these various pieces of information. In doing so, an admissions officer is reassembling her version of Maylee’s Mr. Potato Head.

As an admissions officer pulls pieces of information from Maylee’s Internet bucket, she does so in no particular order and thereafter pieces together the information to construct her idea of Maylee’s identity. In doing so, she builds a sense of what Maylee is like as a person. The admissions officer might get it right and end up with an accurate representation of Maylee’s person. She might ignore the pieces that are *inadequate, inaccurate, irrelevant or excessive* and end up with an accurate perception of Maylee’s identity at the age of 17. But it is much more likely, considering the large number of pieces in the bucket, that the admissions officer’s Mr. Potato Head is wrongly assembled and she gets some inaccurate ideas about who

Maylee is. Furthermore, it is also likely that the admissions officer would encounter pieces of information that no longer represent Maylee's views, affinities or disposition. She may nonetheless pull these outdated appendages out of Maylee's bucket and add these to her conception of Maylee's person.

This "resemblance error" has significant ramifications for Maylee. At any time, an Internet user can find *inadequate, inaccurate, irrelevant or excessive* information about Maylee online and then craft a warped and incorrect conception of her identity. Her social circle, musical preferences and hair colour have changed drastically since the time her parents posted photos and anecdotes about her as a baby. She had forgotten about "liking" the homophobic joke on Facebook and re-tweeting the satanic lyrics. She never knew that someone recorded her laughing in shock at hooligans during the hockey-related riot.

In a world without the Internet and social media, human forgetfulness or inattention would allow Maylee to make mistakes as a child. The virtual realm does not give her the benefit of the doubt.

But that is not all.

The implications of this lack of forgetfulness reach far beyond subsequent prejudice. With the Internet's perfect memory, an unwelcome and unexpected consequence may be an adverse impact on one's fundamental and constitutionally protected freedoms.

WAIT, HOW COULD A PERFECT MEMORY IMPACT FUNDAMENTAL FREEDOMS?

Many commentators, including me, have questioned the adoption of a right to be forgotten from a practical standpoint.³⁴ However, such concerns pale in comparison to another line of argument against the adoption of the right to be forgotten: that it competes directly with constitutional freedoms. These critiques generally focus on the right to free speech held by third parties who speak about the person wishing to be forgotten, as well as on the right of the public to access information.

In some respects, however, is it a fallacy to see the right to be forgotten and free speech as polar ends of a spectrum of rights that must be balanced. If we dissect the meaning of and values underlying free expression, we see that the process of forgetting may not be solely antagonistic to free expression. Rather, the right to be forgotten may actually advance the very purposes for which North American constitutional doctrines protect speech and expression: (1) advancing knowledge and "truth" in the marketplace of ideas;³⁵ (2) facilitating representative democracy and self-

government;³⁶ and (3) promoting individual autonomy, self-expression and self-fulfillment.³⁷

Self-Censorship

In the late 18th century, Jeremy Bentham envisioned a circular building structure, or panopticon, that allowed one prison guard at the centre to observe the conduct of many inmates at the perimeter, without the inmates knowing whether the guard was watching them at any particular time. The guard can see the prisoners, but they cannot see her. Not knowing when they were being watched—but knowing that they *might* be being watched—resulted in prisoners' self-monitoring and in very cost-effective control over inmate behaviour.³⁸

The Supreme Court of Canada has held that a central component to the justification for freedom of expression protections under the *Charter* is their vital role in “ensuring individuals the ability to gain self-fulfillment by developing and articulating thoughts and ideas as they see fit”.³⁹ On social media, users know that others can see their posts, including opinions, comments, “likes”, status updates and shared content. They do not know exactly who will see their posts or when, or what present or future viewers would think about the messages conveyed. We change our behaviour when we suspect that someone is watching. If we know we are not only being watched, but *everything* we do or say can be remembered perfectly in perpetuity by an indeterminable audience, we might think again about doing, saying or posting our originally intended message.

Studies show that digital natives are already managing their online reputation by restricting and self-monitoring what they say online.⁴⁰ If the fear of a perfect and enduring memory results in greater self-regulation and censorship, can it be said that the preservation of every “expression” on social media advances the truth-seeking process that this fundamental freedom so faithfully protects? Similarly, if an individual holding an extreme view had learned from birth that each of her communications may be parroted back to her verbatim at some point in the future, she may be less likely to voice those extreme views or to participate openly in democratic or community dialogue.⁴¹ The self-censorship of views and opinions may invariably result in a more restricted “marketplace of ideas”.⁴²

Remembering the Forest Versus the Trees

A related concern that some commentators raise about the right to be forgotten is that it might limit the Internet as a library of information. An editorial appearing in *The Economist* argued that “search engines should be like library catalogues—comprehensive and neutral, and without fear or favour

of what the contents may reveal, or how they may be used.”⁴³ Some are concerned that the right to be forgotten could result in a “falsification” of history.⁴⁴ Others have equated forgetting with deletion and having the personal data “consigned to oblivion”.⁴⁵

In a previous article on this topic,⁴⁶ Mike Wagner and I referred to the story of *Funes the Memorious*, in which a boy fell off his horse and, as a result, acquired the ability to forget nothing. This proved very problematic for the boy because his unfocused mind could not distill anything new or meaningful. The story illustrates how an abundance of detail may thwart the truth-seeking endeavour. Digital memory may indeed particularize all the trees but obstruct our view of the forest.⁴⁷ The Internet is not the equivalent of a library, but rather every book ever published about any topic or combination of topics, and everything that someone, credible or not, had to say about that topic at any time in any context. Not forgetting might mean that it is more difficult to find the specific information one seeks. Mr. González, the complainant in the *Google Spain* case, was a lawyer. A search for “Mario Costeja González law practice” yields over 11,500 results about the *Google Spain* decision, but none about the area of law in which Mr. González practised.⁴⁸

Exposure to Different Views and Freedom of Association

In addition, the Internet employs algorithms using all the information that it collects and remembers in order to provide suggested content. For example, Facebook provides a “newsfeed” of photos, videos, comments and advertisements catered to each individual user, based on its memorization and analysis of the user’s previous activity and preferences. Suggested content on social media makes more accessible the information that the platform deems will most likely interest each individual. It anticipates content that the user might be looking for and avails that content. It saves time and energy. However, it does not tend to facilitate users’ ability to see alternative topics or views that differ drastically from their own or from previously viewed content. Furthermore, individualized and targeted content is often offered so seamlessly that users do not realize that they are trapped in an echo chamber.

Imagine a brick-and-mortar bookstore that automatically rearranges its shelves and selection each time you walk in based on what you have read in the past. Targeted content on social media may impact young people more than adults because of the former’s cognitive plasticity. If each experience results in different developmental changes in a child’s brain, then a child who sees what she is used to seeing will have a different brain from a child who is exposed to new and surprising information. If a child is

restricted from seeing alternative viewpoints during the sensitive periods in her cognitive development, the result might be a different and arguably stunted person. What if Galileo had believed that Earth was flat when he was a child and was never exposed to evidence to the contrary? Would he have similarly contributed to the truth-seeking endeavour of humankind in the same way? Perhaps not.

Ability to Reinvent Oneself

Consider also the impact of the right to be forgotten on identity. The concept of identity is inextricably linked to self-fulfillment and self-actualization. In Europe there is a well-established notion of “personality”. The underlying concept is the idea of free will, or the ability to choose one’s own personhood, instead of having others determine one’s identity.⁴⁹ The Supreme Court of Canada has held that physical and moral autonomy are essential to the “expression of an individual’s unique personality or personhood” and “the freedom to engage in one’s own thoughts, actions and decisions”.⁵⁰

The “revisability principle” provides that the ability of individuals to revise their identities throughout their lives is crucial because it preserves, among other things, autonomy and, in turn, freedom.⁵¹ This principle posits that “[w]here an individual cannot engage in revision, she becomes increasingly alienated from and disloyal to her own life plans, goals, and projects, even as she continues to pursue them. This is a weighty restraint on freedom”.⁵² If reinvention is key to identity formation, and identity is inextricably linked to self-fulfillment and self-actualization, then the forgetting by others of a person’s former identities may well advance that person’s right to express him or herself freely in the endeavour to flourish as a human being.

Many international legal instruments recognize children’s right to development as fundamental and in need of protection.⁵³ The Supreme Court of Canada has held that identity development is key to self-fulfillment and has emphasized the importance of children’s need to explore their identity in a line of cases regarding freedom of expression.⁵⁴ A large piece of children’s identity-formation process involves their experimentation with different versions of themselves. Through this process, they create different representations of themselves, reveal these representations to the outside world, and then gauge the world’s reactions.⁵⁵ In response to the world’s reactions, children in turn make revisions to their identity and how they perceive themselves, thus creating a feedback loop.⁵⁶ The reliance on others’ forgetfulness is a key part of this revision and reinvention process. A fixation on previous versions of a child’s identity would hinder its revisability.

Of course, social media in and of itself can have certain benefits for identity exploration and development. Users can, through social media, explore various identities simultaneously beyond what seem to be prehistoric “geographical boundaries”. However, in the age of information permanence, it is much more difficult to erase or retract previous representations of oneself on the Internet. Remember Maylee? Rather than having the freedom to pick and choose what goes in her Mr. Potato Head bucket as she revises her identity, she is tethered to a giant aggregate bucket, where pieces go in but never come out. Should Maylee not be allowed, in some instances, to take appendages out of her bucket when they no longer represent elements of her identity? When they are *inadequate, inaccurate, irrelevant or excessive*?

For digital natives like Maylee, it is difficult to predict how data permanence might hinder chance meetings with foreign concepts or people—their freedom of association—and in turn hinder the development of their worldview. The use of social media may have unprecedented and unexpected outcomes for Maylee and her contemporaries, years down the road. Without a right to be forgotten, or some variant, their “electronic shadow”⁵⁷ may well result in reduced freedom.

CONCLUSION

Historically, psychologists have metaphorically described the human mind as a computer. I do not think these psychologists foresaw the tenacity of the Internet or anticipated that the computer would have the power to influence each human mind it interacts with in such a pernicious and pervasive manner. The human mind forgets but the computer, when it is online, has infinite and infallible storage. In an insightful 2004 decision, rendered before the social media boom, the Ontario Court of Appeal contemplated one downside to the limitlessness of the Internet:

The Internet represents a communications revolution. It makes instantaneous global communication available cheaply to anyone with a computer and an Internet connection. It enables individuals, institutions, and companies to communicate with a potentially vast global audience. It is a medium which does not respect the geographical boundaries. Concomitant with the utopian possibility of creating virtual communities, enabling aspects of identity to be explored, and heralding a new and global age of free speech and democracy, the Internet is also potentially a medium of virtually limitless international defamation.⁵⁸

Fast-forward more than ten years: social media has become a central part of the everyday lives of much of the world’s citizenry. We have learned new terms such as “meme” and “GIF”, and new meanings for old terms such as

“tweet” and “poke”.⁵⁹ However, the following old adages still stand: people make mistakes and people change. The preservation of society’s belief in these axioms requires some forgetting.

ENDNOTES

1. For further background, see Mike Wagner & Yun Li-Reilly, “The Right to Be Forgotten” (2014) 72 *Advocate* 823. For a summary of the topics dealt with in this article, see Yun Li-Reilly, “Children’s Right to Be Forgotten”, Office of the Privacy Commissioner of Canada’s Consultation on Online Reputation (August 2016), online: <priv.gc.ca/en/about-the-opc/what-we-do/consultations/consultation-on-online-reputation/submissions-received-for-the-consultation-on-online-reputation/or/sub_or_26/>.
2. Drew Nelles, “The Internet Dilemma: Do People Have a Right to Be Forgotten?”, *The Globe and Mail* (3 May 2014), online: <www.theglobeandmail.com/life/the-internet-dilemma-do-people-have-a-right-to-be-forgotten/article11715854/>.
3. United Food and Commercial Workers Union, “By the Numbers: Social Media in Canada” (25 February 2017), online: <www.ufcw.ca/index.php?option=com_content&view=article&id=31389:by-the-numbers-social-media-in-canada&catid=9820&Itemid=6&lang=en>.
4. Melody McKinnon, “Canadian Social Media Use and Online Brand Interaction (Statistics)”, *Canadian’s Internet Business* (24 May 2016), online: <canadiansinternet.com/2016-canadian-social-media-use-online-brand-interaction-statistics>. In reluctantly admitting that I am a millennial, I must also admit that I cannot list 16 people who have never tried using Facebook.
5. Twitter, “Twitter Usage/Company Facts” (31 July 2016), online: <about.twitter.com/company>.
6. Craig Smith, “By the Numbers: 120+ Amazing YouTube Statistics”, *DMR Stats/Gadgets* (25 November 2015), online: <expandedramblings.com/index.php/youtube-statistics>.
7. John Palfrey & Urs Gasser, *Born Digital: How Children Grow Up in a Digital Age*, revised and expanded ed (New York: Basic Books, 2016).
8. I refer to the terms “children”, “youths”, “youth adults” and “young people” in this article, sometimes interchangeably. While this article recognizes that children differ significantly depending on their age and stage of development, it will deal with children as a general group that is different from adults.
9. The Canadian statistics cited in this paragraph come from Valerie Steeves, “Young Canadians in a Wired World, Phase III: Life Online – Executive Summary” (Ottawa: MediaSmarts, 2014), online: <media-smarts.ca/sites/mediasmarts/files/pdfs/publication-report/summary/YCWVIII_Life_Online_ExecutiveSummary_2.pdf>.
10. “Digital Birth: Welcome to the Online World”, *Business Wire* (6 October 2010), online: <www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World>.
11. United Food and Commercial Workers Union, *supra* note 3.
12. David Lindsay, “The ‘Right to Be Forgotten’ in European Data Protection Law” in Normann Witzleb et al, eds, *Emerging Challenges in Privacy Law: Comparative Perspectives* (Cambridge: Cambridge University Press, 2014) 290 at 293.
13. This “Big Data”—extremely large sets of data collected and analyzed via sophisticated data-processing techniques—are collected as a part of these users’ mere interaction with the Internet and its products. This Big Data is then used to reveal “patterns, trends, and anomalies in human interaction and behaviour”. See Palfrey & Gasser, *supra* note 7.
14. See Mark Milian, “60 Apps Launch with Facebook Auto-Share”, *CNN* (18 January 2012), online: <www.cnn.com/2012/01/18/tech/social-media/facebook-actions-apps>; Will Oremus, “Who Controls Your Facebook Feed”, *Slate* (3 January 2016), online: <www.slate.com/articles/technology/cover_story/2016/01/how_facebook_s_news_feed_algorithm_works.html>; Nielsenwire, “Ads with Friends: Analyzing the Benefits of Social Ads” (6 March 2012), online: <www.nielsen.com/ca/en/insights/news/2012/ads-with-friends-analyzing-the-benefits-of-social-ads.html>.
15. *Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, C-131/12, [2014] ECR I-317 [Google Spain].
16. Google, “Google Transparency Report”, online: <www.google.com/transparencereport/removals/europeprivacy>.
17. Some have questioned whether any request is even necessary for Google to de-index search results under the right to be forgotten in its current European iteration. For example, Dan Tench questions whether the processing of data “is unlawful whether or not a request is received”. He argues that “[i]f the processing is unlawful even without a request, data protection regulators may increasingly clamp down on search engines to prevent any searches relating to individuals, save where there is a clear public interest in the information in question.”: Dan Tench, “Slipping the Net” (2014) 164 *New Law Journal* 18, online: <www.newlawjournal.co.uk/content/slipping-net>.
18. A French lawyer, Dan Shefet, sought an order against Google to de-index online content that accused him of professional malpractice, fraud and connections to the mafia. In reliance on the right to be forgotten, a French court ordered that Google France be fined €1,000 per day until it de-indexed the impugned links about Mr. Shefet, not just from google.fr, but from all searches conducted world-

- wide on Google: see Mark Scott, "Still Fighting for the Right to Be Forgotten Online", *The Irish Times* (5 February 2015), online: <www.irishtimes.com/business/technology/still-fighting-for-the-right-to-be-forgotten-online-1.2091260>; Joseph Plambeck, "Daily Report: Google and the Spread of the 'Right to Be Forgotten'", *The New York Times* (6 August 2015), online: <bits.blogs.nytimes.com/2015/08/06/daily-report-google-and-the-spread-of-the-right-to-be-forgotten>. Similarly, Max Mosley, a former Formula One president whose sadomasochist orgy with sex workers was recorded and released online, successfully enforced his right to be forgotten against Google in Paris and Hamburg, prior to settling his disputes with the search engine giant: Ulrike Dauer & Lisa Fleisher, "Former Formula One Chief Max Mosley Settles Legal Dispute with Google", *The Wall Street Journal* (15 May 2015), online: <www.wsj.com/articles/former-formula-one-chief-max-mosley-settles-legal-dispute-with-google-1431702038>. More recently, France's Commission nationale de l'informatique et des libertés fined Google €100,000 for its failure to follow an order applying the right to be forgotten: Sam Schechner, "France Fines Google over Right to Be Forgotten", *The Wall Street Journal* (24 March 2016), online: <www.wsj.com/articles/france-fines-google-over-right-to-be-forgotten-1458847256>. Courts in Japan and Hong Kong have also dealt with similar issues: see Tomoko Otake, "'Right to Be Forgotten' on the Internet Gains Traction in Japan", *The Japan Times* (9 December 2014), online: <www.japantimes.co.jp/news/2014/12/09/national/crime-legal/right-to-be-forgotten-on-the-internet-gains-traction-in-japan/#.VwtE_Oekyh>; Mark Parsons, Eugene Low & Dominic Edmondson, "A Right to Be Forgotten in Hong Kong?", Hogan Lovells (14 August 2015), online: <www.hlmediacomms.com/2015/08/14/a-right-to-be-forgotten-in-hong-kong>. In addition, in January 2016, a right to be forgotten law came into effect in Russia. This law applies to information that is distributed contrary to legislative requirements, is inaccurate, or is accurate but no longer relevant: see Irina Anyukhina, "'Right to Be Forgotten' in Russian Data Protection Law Has Passed All Stages of Approval", *The National Law Review* (21 July 2015), online: <www.natlawreview.com/article/right-to-be-forgotten-russian-data-protection-law-has-passed-all-stages-approval>.
19. Make no mistake: children are not simply passive victims of privacy invasions and reputational damage. Children are active guardians of their privacy and online reputation. Research shows that children use various methods to protect their reputation and privacy online. Young people are not careless about or unable to protect their privacy and reputation. This is not what makes them different from adults. Young people differ from adults in that they interact differently with the Internet and are subject to different pressures when it comes to social media.
 20. Usha Goswami, *Child Psychology: A Very Short Introduction* (New York: Oxford University Press, 2014) at 571.
 21. *Ibid* at 614.
 22. Mary Madden et al, "Teens, Social Media, and Privacy", *Pew Research Center* (21 May 2013), online: <www.pewinternet.org/2013/05/21/teens-social-media-and-privacy>.
 23. Dafna Lemish, *Children and Media: A Global Perspective* (Chichester: Wiley-Blackwell, 2015) at 178.
 24. Nancy Doucette, "Something to Talk About", *The Rough Notes Company, Inc.*, citing Matt Cullina, online: <www.roughnotes.com/rnmagazine/2013/april/2013_04p056.htm>.
 25. Palfrey & Gasser, *supra* note 7 at 54.
 26. June Eric Udorie, "Social Media Is Harming the Mental Health of Teenagers. The State Has to Act", *The Guardian* (16 September 2015), online: <www.theguardian.com/commentisfree/2015/sep/16/social-media-mental-health-teenagers-government-pshe-lessons>.
 27. I genuinely "like" each of these posts I come across, and would undoubtedly make similar posts in similar circumstances.
 28. See e.g. *In Re Nickelodeon Consumer Privacy Litigation*, 2015 US Dist LEXIS 6428 (DNJ).
 29. Kaplan Test Prep, "Facebook Checking Is No Longer Uncharted Territory in College Admissions: Percentage of Admissions Officers Who Visited an Applicant's Profile on the Rise" (21 September 2011), online: <press.kaptest.com/press-releases/facebook-checking-is-no-longer-unchartered-territory-in-college-admissions-percentage-of-admissions-officers-who-visited-an-applicant%E2%80%99s-profile-on-the-rise>.
 30. CareerBuilder, "Number of Employers Passing on Applicants Due to Social Media Posts Continues to Rise, According to New CareerBuilder Survey" (26 June 2014), online: <www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?sd=6%2F26%2F2014&id=pr829&ed=12%2F31%2F2014>.
 31. Maeve Duggan, "Is Social Media the New Wingman for Singles?", *Pew Research Center* (12 November 2013), online: <www.pewresearch.org/fact-tank/2013/11/12/is-social-media-the-new-wing-man-for-singles>.
 32. For a more detailed example of longitudinal Internet data collection and "digital dossiers", see Andy's story in Palfrey & Gasser, *supra* note 7 at 37.
 33. Not to mention Big Data.
 34. See e.g. Natasha Simmons, "Forget Me Not? Europe's 'Right to Be Forgotten' in the Google Age", (2014) 35:6 Business Law Review 202 at 202; Felicity Gerry, "The Rule of Law Online: You Can't Steal Cakes That Google Hasn't Baked!" (2015) 18:7 Journal of Internet Law 3; Andrew RW Hughes, "Does the United States Have an Answer to the European Right to Be Forgotten?" (2014) 7:1 Landslide 18.
 35. *Abrams v United States*, 250 US 616 (1919) [*Abrams*]; *R v Keegstra*, [1990] 3 SCR 697 [*Keegstra*], citing *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at 976 [*Irwin Toy*]. Note that the US and Canada have diverged in their interpretation of the truth-seeking endeavour, especially in the context of hate speech.

36. *R v Zundel*, [1992] 2 SCR 731; *The New York Times v Sullivan*, 376 US 25, 85 S Ct 710 at 721 (1964); *Whitney v California*, 274 US 357 at 375, 47 S Ct 641 (1927) [*Whitney*].
37. *Irwin Toy*, *supra* note 35 at 976. While this right has been criticized as an overbroad justification for free expression, the right of individuals to “develop their faculties” (*Whitney*, *supra* note 36) is nonetheless a ground supporting speech protection in North America.
38. See e.g. University College of London, “The Panopticon”, online: <www.ucl.ac.uk/culture/jeremy-bentham/panopticon>.
39. *Keegstra*, *supra* note 35 at 763.
40. *Madden et al*, *supra* note 22.
41. This is not a suggestion that if a right to be forgotten were adopted, people would necessarily become more careless with the online disclosure of personal information. This is certainly not a trend seen in Europe since the *Google Spain* decision.
42. *Abrams*, *supra* note 35.
43. “On Being Forgotten”, *The Economist* (17 May 2014), online: <www.economist.com/news/leaders/21602219-right-be-forgotten-sounds-attractive-it-creates-more-problems-it-solves-being>.
44. Opinion of Advocate General Niilo Jääskinen delivered on 25 June 2013, Case C-131/12 at para 129. Australian Professor Michael Douglas contends, “Not forgetting makes us better, faster and stronger. It makes us more productive, more knowledgeable, and better at quiz nights. Digital eternity is an incident of human progress”: “Questioning the Right to Be Forgotten” (2015) 40:2 *Alternative Law Journal* 109 at 112.
45. Eleni Frantziou, “Further Developments in the Right to Be Forgotten: The European Court of Justice’s Judgment in Case C-131/12, *Google Spain, SL, Google Inc v Agencia Espanola de Proteccion de Datos*” (2014) 14:4 *Human Rights Law Review* 761 at 776.
46. *Wagner & Li-Reilly*, *supra* note 1.
47. Kate Connolly, “Right to Erasure Protects People’s Freedom to Forget the Past, Says Expert”, *The Guardian* (4 April 2013), online: <www.theguardian.com/technology/2013/apr/04/right-erasure-protects-freedom-forget-past>, citing Viktor Mayer-Schönberger, professor of Internet governance and regulation at the Oxford Internet Institute.
48. Similarly, litigators might agree that it is much more difficult to extract the “zingers” from the full transcript of a cross-examination than from the notes of the key points.
49. See Ashley Messenger, “What Would a ‘Right to Be Forgotten’ Mean for Media in the United States?” (2012) 29 *Communications Lawyer* 29.
50. *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 at paras 65–67.
51. Andrew Tutt, “The Revisability Principle” (2015) 66 *Hastings Law Journal* 1113 at 1128.
52. *Ibid.* Tutt further argues that revisability is key in the debate about the right to be forgotten.
53. *Universal Declaration of Human Rights*, GA Res 217 (III) UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810, (1948), art 25; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS at 171, art 24, 6 ILM 368; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 999 UNTS at 3, art 10, 6 ILM 360; *Charter of Fundamental Rights of the European Union*, 2000 OJ C 364/01, art 24.
54. See e.g. *R v Sharpe*, 2001 SCC 2.
55. How individuals interpret the effects of their own behaviour informs and alters their subsequent conduct and their identity: see Rosalyn H Shute & Phillip T Slee, *Child Development: Theories and Critical Perspectives*, 2nd ed (Hove: Routledge, 2015), citing Albert Bandura, “Exercise of Human Agency through Collective Efficacy” (2000) 9:3 *Current Directions in Psychological Science* 75.
56. For more on social versus personal identities, see Palfrey & Gasser, *supra* note 7 at 17, 24.
57. *Messenger*, *supra* note 49.
58. *Barrick Gold Corp v Lopehandia* (2004), 71 OR (3d) 416 (CA).
59. The first time I saw a “selfie” stick was at the Vancouver Aquarium, and I literally “LOL’ed” (laughed out loud) at the concept. A few months later, as I considered buying one as a gift, this real-world invention for the purposes of facilitating a cyberspace trend did not seem so preposterous.

