THE RIGHT TO BE FORGOTTEN IN ARGENTINA

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To this date date, Argentina lacks a legal platform to address whether or not Internet intermediaries are responsible or not for the content available within their network and the role of the "right to be forgotten" within this framework. This has created a legal gap that has generated an uneven atmosphere which can be exemplified through the various precedents within the current legal history of the country.Through the Supreme Court's decision in the *Rodriguez* case, which establishes that research engines (Internet intermediaries) are not responsible for the content that they upload to their networks, it was understood that there was no sanction required for the intervention that these engines provide in legal where they are rights being affected. It is argued that due to the nature of the activity, which corresponds strictly to the provision of information - independently of its content- no attribution of responsibility for the damages should be enforced since it exceeds their operations; excluding situations where the damage has been properly informed and not been addressed.

The digital revolution[1] and the denominated *Fourth Industrial Revolution*[2] , are modifying radically the world we live in. In this context of change, privacy and the control of our information in the Internet are issues of main importance for constitutional States: who can access certain personal information? How is that information used? How is it stored? Or, for how long? The answers to these questions outline serious challenges to the judicial practitioners[3] .

In this scenario, the debate on the effectiveness of the "right to be forgotten" arises. This debate, in synthesis, can be approached from a double perspective: on the one hand, as a right to "give back" to the individual the control over its personal information; on the other hand, to give the individual the possibility to "free its past from a rigid digital mould." [4]

To approach the content and scope given to this right in Argentina, we shall develop the following three aspects:

First: briefly analyze the *conceptualization* of the right to be forgotten, from the terms established in the precedent "*Google Spain*"[5] of the Court of Justice of the European Union (hereinafter, "CJEU.")

Second: synthesize the judicial precedents in the Argentine law, specially focusing on the "*Rodriguez*" case of the Supreme Court of Justice of the Argentine Republic (hereinafter, "CSJN," for its syllables in Spanish, or "Supreme Court"), considering it a leading case on the matter.

Third: outline the bills presented in the National Congress and how these intend to regulate the responsibility of the intermediaries and the right to be forgotten. Here, the attention is focused on the relevant matters of the bill that received preliminary approval in the National Senate.

1 ECLAC (United Nations Economic Commission for Latin America and the Caribbean), "*The new Digital Revolution: from a consumption Internet to a production Internet*," August 2016, Economic studies, *The Digital Revolution,* Institute of Economic Studies, 2016.
2 See Schwab, Klaus, "*The forth Industrial Revolution*", Ed. Debate, 2016; and also, Word Economic Forum, "Living the Fourth Industrial Revolution", available at: goo.gl/8LVxBY
3 Report from Frank La Rue - former special reporter from the UN for the Promotion and Protection of the Rights of Opinion and Expression - pages 5/6.
4 CELE (Freedom of Expression Centre of Study), "*The Right to be forgotten: between data protection, memory and personal life in the digital era*", Palermo University, page 3.
5 Court of Justice of the European Union, "Google Spain, S.L., Google Inc. v/ Agencia Española de Protección de Datos (AEPD), Mario Costeja González", ruling from May 13th, 2014. Available at: goo.gl/p6lRcN

E-conférence, droit à l'oubli en Europe et au-delà
E-conference Right To Be Forgotten in Europe and beyond
PART 3 : THE RIGHT TO BE FORGOTTEN BEYOND THE EU

THE RIGHT TO BE FORGOTTEN IN ARGENTINA

I. PRELIMINARY CONSIDERATIONS.

It is important to start outlining some conceptual distinctions, by answering the following two questions:

a) What are the Internet intermediaries and under which ways can its liability be established?

All Internet communications are obtained by intermediaries. "*Internet intermediaries*" is a broad term that refers to the entities that allow individuals to connect to the Internet and share content. There are different types of intermediaries, such as internet access suppliers, web hosting service suppliers, social network platforms and search engines. There is a distinction between internet intermediaries and "content producers". The later are people or organizations in charge of producing information and posting it online[6].

On this aspect, there exist four models or types of liability that can be attributed to the intermediaries regarding online information[7] :

i) *Absolute immunity*: in this model, intermediaries are not responsible for any kind of illegal content published or shared by individuals through their service.

ii) *Objective liability*: here, the intermediaries will always be responsible for the content users express through them, regardless their knowledge on said content. The only way intermediaries exempt their liability will be to constantly monitor and/or filter or block those contents potentially considered illicit and/or that might compromise their liability.

iii) *Conditioned immunity*: the intermediaries shall not be responsible if certain conditions or requirements are satisfied. The intermediaries are offered a "safe port": that is to say, as long as they comply with certain specific duties, they shall not be responsible for illegal content from third parties. Here, at least two (2) variants or systems can be perceived: a) n*otice and takedown*, that requires the user to consider that certain content is illegal and to notify the intermediaries so as to filter the content, b) *notice and notice,* the user notifies the intermediaries the existence of legal content, and they shall notify that to those who generated the content.

iv) *Subjective liability*: in this model, it shall be analyzed the behavior of the intermediaries so as to define if all the precautions have been considered or if there exists negligence.

b) What is meant by "search engines" and "thumbnails"?

The name given to "search engines" is related to the service they supply of searching automatically contents in the Internet that are related to or characterized by a few search words determined by the user. They work as a technical tool that favors access to the desired content by automatic references[8].

On the other hand, the term "thumbnails" refers to the link of an original image uploaded to a website, hinting the user on the content of the website, and also allowing the user to decide whether to access the page or not[9].

II. RIGHT TO BE FORGOTTEN. TERMINOLOGICAL ISSUES.

The right to be forgotten usually includes the right to change, evolve and contradict oneself. Fundamentally, it is based on the principle of the limited extent of data retention that was established by the National Commission on Informatics and Liberty in France[10] . In essence, the abovementioned principle determines that information cannot be archived in digital files indefinitely, but for the necessary time so as to comply with the proposed objective for which it was collected[11].

6 Defense on freedom of expression and information, "*Internet intermediaries: Dilemma on responsibility – Q&A Sessions*", available at goo.gl/n3Zhxp
7 Meléndez Juarbe, Hiram A., "Intermediaries and Freedom of Expression", in Bertoni, Eduardo Andrés (comp), "*Towards an Internet free of censorship.*" Proposed for Latin-American, Buenos Aires, Palermo University, 2012, pages 116/117.
8 Conf. Thibault Verbiest, Gerald Spindler, Giovanni M. Ríccio, Aurélie Van der Perre, "*Study on the Liability of Internet Intermediaries*", November 2007, page 86 and whereas 14° of ruling "Rodríguez".
9 Autonomous entity in charge of protecting data processing in that country.
10 According to the definition of the Supreme Court of Justice of the Argentine Republic on the judgment "Rodríguez María Belén v/ Google Inc. on damages," October 28, 2014, whereas 19° and 20°.
11 CELE, "*The Right to be forgotten: between data protection, memory and personal life in the digital era*", Palermo University, page 16 and Commission Nationale de L'Informatique et Des Libertés, "Rapport d'activité 2011", available at goo.gl/DCK-PqX

THE RIGHT TO BE FORGOTTEN IN ARGENTINA

Regardless of the several names[12] given to it, the right to be forgotten essentially involves the decision of "erasing" content of the search engines whenever these attempt against the privacy or free exercise of fundamental rights.

This concept, even though is not new[13], is supported by the recognition of the right to be forgotten established by the CJEU by making the intermediaries responsible of the data contained in their search engines[14]. Therefore, according to the ruling, an individual can request that certain personal information be removed from the results of search engines, provided that: a) the personal information was inadequate, not pertinent, out of date or excessive related to the end it was uploaded in a first place, and b) that there is no public interest[15] .

However, it is important to consider that the conception and development of the right to be forgotten is related to the historical and cultural context of certain countries.

For example, during the 20th century, Argentina suffered systematic and massive violations of human rights, due to the interruption of democratic governments, as of military and/or civic coups; indeed, the last civic and military dictatorship (1976/1983) caused the perpetration of multiple crimes against humanity. In this context, *the right to be forgotten can be considered as a grievance*, if those individuals involved in the violation of human rights could request Google to make that information impossible to find[16] .

Thus, this matter, among others, determines that the right on freedom of expression shall prevail over the right to be forgotten. Or, in other words, different nuances can be detected to perceive if the perspective is focused on the protection of personal data, or if it focused on the freedom of expression. In both scenarios, the following questions arouse regarding substantive aspects: shall the individuals have the power to suppress veridical information on their past? If so, what are the limits that shall be established by law? But, also, a question of procedural character arouses: if the right to be forgotten exists, who shall be in charge of its application and under what rules?

In the case exposed below, we will be able to observe how the Argentine Supreme Court of Justice approached these matters and, basically, the current contrast with the European judicial precedents regarding the requirement of a court order to remove content from the Internet[17].

III. ARGENTINE JUDICIAL PRECEDENTS.

As anticipated, Argentina lacks a rule that regulates in a specific way the liability of intermediaries. Factually, this represents a difficulty that can be evidenced in the judicial precedents analyzed below:

A) The Supreme Court perspective.

The Supreme Court of Justice of the Argentine Republic's "*Rodriguez*" case can be summarized as follows:

i. *The case facts*. The case dates from 2006 when the model María Belén Rodriguez filed a complaint against Google Inc.[18] since, when typing her name on the search engine, she was related to web pages with erotic and/or pornographic content.

At first instance the complaint was sustained by considering that the search engines have incurred on culpable negligence by failing to absolutely block or impede the existence of injurious or illegal content which might cause damages to the plaintiff personal rights. Then, ordered Google and Yahoo to pay a fine and to definitely delete all the links between her name, image and photos and sites and activities with erotic content. The judgment was appealed by all parties. The National Court of Appeals with jurisdiction on Civil matters partially revoked it by dismissing the claim against Yahoo and accepting the one against Google; reduced the latter's compensation; and eliminated the transcriptions, conforming it to the subjective liability regime. Both the plaintiff and Google filed extraordinary appeals, which were granted, against this judgment.

ii. *The Court decision.*[19] Having previously held a public hearing [20], the CSJN ordered that the search engines shall not be held responsible for the content that they upload to the network. As a principle, the Court established that the search engines shall not be held responsible for content they have not created, since this situation would be comparable to punishing the libraries for having catalogued books that have injurious content, alleging they have "encouraged" the damage [21].

The judgment argumentative approaches can be summarized as follows: 1) The subjective civil liability might be assigned to search engines when the content, which is accessed through them, damages rights, and 2) The mechanism to establish subjective liability on search engines requires that they be notified of damages to the right to privacy, honor and/or image, and that they failed to act assiduously or omitted to block the access to that information.

Regarding the first approach, even if the plaintiff wanted the case to be judged according to the objective liability rules, the CSJN will discard the application of these rules and applied the subjective liability ones considering that:

A) "Browsers" are not obliged to "monitor" (supervise or control) the content that is uploaded to the network and are provided by each web page responsible;

B) As a logic corollary, the absence of monitoring obligation is followed by the absence of liability;

C) If an illegal activity is being carried out – which, by hypothesis, shall be punished - the responsible of the path that leads to the place where it is being performed cannot be punished, stating that he had eased the access to it.

On this basis, the Court concluded that the search engines are initially not responsible for the content that they have not created; that is to say, according to CSJN, search engines connect web sites but are not responsible for its content. Thus, the Court considered that establishing an objective liability regime shall lead to the discouragement of the existence of search engines, which have an essential role in the right to search, receive and spread information and opinions freely on the internet [22].

With relation to the second approach, -proceedings to establish the subjective liability-the CSJN noted that there are some cases where the search engines shall be liable for external content; that is whenever it has effective knowledge of the content's illegality. On this sense, and as *obiter dictum,* the judgment established the "effective knowledge required for subjective liability". Under such requirement, the Court questioned, in light of the lack of legal regulation, whether it is enough for the injured party to give private notice to the "search engine" or if, on the contrary, it is mandatory that the notification be made by a competent authority. Considering this, two (2) situations were distinguished: a) cases where the damage is evident and coarse, b) cases where the damage is debatable, dubious and needs to be proven.

The first set of cases correspond to "illegality of injurious content", where the illegal nature -civil or criminal- of the content is evident and directly results by accessing the page identified by the damaged party in a reliable notification or, depending on the case, of any party, without the need to further assessment or clarification. On the contrary, the second set of cases correspond to those cases where the injurious content eventually damages the honor -or other types of damages-, but such damages need to be established on judicial or administrative forum for its effective determination[23] .

In the case of the latter it was concluded that it is appropriate to require a notification by a competent judicial or administrative body;, the simple private communication by the party that is considered damaged is not enough,

12 As affirmed by Fleischer, the right to be forgotten is usually represented as from the well know Rorschach test, to which individuals assign several meanings. See Fleischer, Peter, "The right to be forgotten, or how to edit your history," in his persona blog, January, 2012, available at goo.gl/jk89yw
13 The origin of the right to be forgotten can be found in the concept of Frech Law droit à l'oubli and from Italian Law diritto all'oblio, which, in general, "can be perceived as the «right to silent events from the past that are not longer taking place »". Ferrari Verónica – Schnidrig Daniela, "*Intermediaries Liability and the Right to be forgotten.*" Contributions for argentine lesgislative discussions, CELE, June 2015, page 9. It can also be related with German laws elaborated so as to assist rehabilitated criminals, see Keller, Daphne, "*The Right to be forgotten, from Europe to Latin America*," at Del Campo, Agustina, "*Towards an Internet free of Censorship II. Latin America Perspectives*," CELE, Palermo University, 2017, page 174.
14 CJEU, "The representative of an Internet search engine is responsible for the treatment applied to personal data that appear in websites published by third parties," press release nº70/14, May 14, 2014. Available at: goo.gl/YAax2U
15 Whereas 81 y 94.
16 The current director of the Argentine Agency on the Protection of Data affirms that in such sense, it will be an *"insult for our History (so as to put it in a soft way)*," Bertoni, Eduardo, "The Right to be Forgotten: insult for the Latin American History, The Huffington Post, September 24, 2014, available at http://huff.to/1ucd9pk.
17 Keller, Daphne, "*The Right to be forgotten, from Europe to Latin-American,"* at Del Campo, Agustina, "*Towards an Internet free of Censorship II. Latin America Perspectives*," CELE, Palermo University, 2017, page 184.
18 Afterwards she amended the complaint against Yahoo from Argentina S.R.L (Argentine Limited Liability Company).
19 The majority decision was made by Carlos Fayt, Eugenio Zaffaroni and Elena I. Highton de Nolasco. Currently, the latter is the only one occupying the position at the Supreme Court
20 Open court held on May 21st and 29th, 2014. Available at: goo.gl/Sx9nTy.
21 Whereas clause 19° of Lorenzetti and Maqueda's vote.
22 Whereas clause 19° of Lorenzetti and Maqueda's vote.
It is not appropriate to apply different rules to the "search by image" and the "text search" applications, as both link content which have not been created by them
23 Whereas clause 18°.

and even less that by an interested party[24].

Lastly, the Court pronounced a ruling on the thumbnail stating that they are not judged for the responsibility that might be held on an internet page - by the wrongful publishing or circulation of images - but by being the intermediary whose only role is to link to this information. Consequently, it stated that:

1. It is not appropriate to apply different rules to the "search by image" and the "text search" applications, as both link content which have not been created by them[25] ;
2. It is appropriate to confer liabilities to the web page creator and not to the search engine and its results[26] , and
3. The search engines might be held liable if, once they have been properly notified of the violation, they do not act with due diligence[27] .

This last statement shall be appropriate whenever, to ensure a balance of interests, the links associated to the person and the damage they cause are precisely identified. Under these terms, the protection provided is a type of subsequent indemnification that prevents all generalization, which shall affect the flow of thoughts, messages or images and consequently the freedom of expression[28] .

iii. *The dissidence on the judgment*. The judgment has a partial dissidence of two members[29] of the Supreme Court who believed that:
a) The model shall be indemnified for the usage of her image due to the "lack of consent" on its publishing;
b) The Court should proceed to a writ of injunction aiming to delete existent links, whereas it is oriented to delete other existent links so as to avoid the future connections with the same characteristics[30] .

With relation to the first matter they agreed that a) on Argentine law it is unavoidable to resort to Act 11,723 on Intellectual Property which states that it is mandatory to have the consent of the owner of the personal right for the publishing of his image, b) the legislator, as a norm, prohibited the image reproduction, which only relinquishes if certain circumstances aiming to general interest suggest them to prevail.

As per the second aspect, they agreed that the search engines activity on internet is not incompatible to the civil liability regime on its preventive aspect, in case of actual threat of damage, to prevent the repetitive spreading of detrimental information on the plaintiff personal rights. This conclusion is based on the general principle of damage prevention that states that all individuals have the duty to avoid causing unjustified damage[31] and to adopt reasonable measures to prevent it for happening or to diminish its scope[32] .

In subsequent cases, the Argentine Supreme Court has referred to this precedent to rule on the merits and issue a judgment[33].

B) Other precedents by lower courts

Previous to the judgment in the "*Rodriguez*" case, the Argentine judiciary had to deal with similar situations; however, due to the lack of legal regime and judicial precedents from the Supreme Court, there were not uniform judicial responses. Hereinafter there are some examples of different responses that were given.

In the case *"Bluvol"*[34] , an entrepreneur brought a lawsuit against Google for the existence of a blog with his name, the two courts that heard the case applied different responsibility regimes. In the lower court, the complaint was sustained by applying the objective liability regime, ruling that the search engines shall give compensation to the plaintiff. In the upper court, the objective liability regime was dismissed, arguing that Google, as an intermediary, shall not automatically be liable for third

24 Whereas clause 18°.
25 Whereas clause 20°.
26 Whereas clause 20°.
27 Whereas clause 22°.
28 Whereas clause 31° of Lorenzetti and Maqueda's vote.
29 Judges Lorenzetti and Maqueda.
30 Whereas clause 31° of Lorenzetti and Maqueda's vote.
31 They determined few origin requirements and characters of the preventive prohibition aiming to avoid repetition, aggravation or damage persistence, namely: i. Criteria with less restriction possible shall be analyzed, and the most appropriate mean to guaranty the proportionality and efficiency for the aim fulfillment, ii. The affected or threatened party shall provide, according to the case circumstances, the identification rules necessary for its creation, iii. The abovementioned preventive protection is independent from the recessionary one; iv. It works independently from a new effective configuration of damage to the objective and subjective rights of an individual, as the mere existence of foreseeable threat to the protected legal right enables its legal origin. See whereas clauses 33 and 34.
32 Whereas clause 31° of Lorenzetti and Maqueda's vote.
33 CSJN, «Da Cunha, Virginia v. Yahoo de Argentina S.R.L and other on damages» and «Lorenzo, Bárbara v. Google Inc on damages», judgements passed on December 30th 2014.
34 National Court of Appeals with jurisdiction on Civil matters, "Bluvol Carlos v. Google Inc. and others for damages", judgement passed on 05 December 2012

parties illegal actions, as it is impossible to previously assess all the information that is spread. Even though the upper court ruled that Google was liable, it did so by applying the subjective liability regime, stating that the search engine behavior was analyzed and considered negligent.

In the case "*Carrozo* "[35] Google and Yahoo were ordered to compensate a model for the use of her image on pornographic sites by the application of the objective liability regime. In this case the court considered the search engines were acting hazardously and that made them automatically liable for the damages they shall cause.

In another similar case, "*Da Cunha*"[36] on the contrary, a subjective liability regime was applied holding the search engine liable as it was notified and did not remove the content.

IV. - TOWARDS A REGULATORY POLICY: A REVISION OF SEVERAL BILLS.

With the exponential growth of Internet and Big Data, new challenges arise that need to be solved in order to ensure user's rights. On this sense, Argentina lacks rules that regulate these matters. However, the following regulatory documents can be consulted:

i. *Act 26,032*: As it establishes that "the search, reception and spread of information and ideas of all kinds, through Internet service, are considered within the constitutional guaranty that protects the freedom of expression"[37] .

ii. *The new Civil and Commercial Code of the Argentine Republic*[38] : Establishes an objective liability regime (sections 1722 and 1723) and a subjective liability regime (section 1724).

iii. *The Manila Principles*: These determine that: a) intermediaries shall be protected by law from liability for third parties' content; b) it shall not be required content restriction without an order issued by a judicial authority; c) requests for content restriction shall be clear, unmistakable and shall respect the due process; d) law, orders and content restriction practices shall comply with the necessity and proportionality assessments and the due process; e) transparency and information of actions taken shall be within normative, policies and practices on content restriction[39].

Since 2006 there are bills that have not been considered. Particularly, on the Argentine Republic´s Senate there are some proposals that try to consider, within a generic scope for internet regulation, intermediaries or search engines responsibility.

During the last period, there were two (2) bills pending treatment: bill S-942/2016[40] and bill S-1865/2015. Towards the end of last year, a bill that unifies the aforementioned bills has been partially passed by the Argentine Republic´s Senate.

This bill aims to regulate the internet service providers' responsibility, ensuring the freedom of expression and the right to information taking into consideration the preservation of the rights of honor, privacy and image.

As an exception, it holds responsible the internet service providers with subjective liability to the exemption from liability to monitor and supervise content generated by third parties[41]. In that way, disposes a search engine to be responsible for the external content, when having been notified of the illegality, shall not act as instructed by the judge.

As it can be noted, the legal mechanism chosen was the determination by "effective knowledge", establishing that "in no case shall be considered that the self-regulation system implies effective knowledge"[42] Likewise, taking into consideration the Supreme Court's doctrine on the judgment aforementioned, ascertains that the complainant shall precise the link where the content in question is located or the proceedings for its access[43] .

It is important to mention that this bill focuses in the Argentine internet provider's responsibility but does not

35 National Court of Appeals with jurisdiction on Civil matters, "Carrozo Evangelina v. Yahoo de Argentina and others for damages", judgment passed on 10 December 2013.
36 National Court of Appeals with jurisdiction on Civil matters, "D.C. V. v. Yahoo de Argentina S.R.L and others for damages", judgment passed on 10 August 2010. This case reached the Supreme Court and the extraordinary remedy entered was dismissed.
37 See section 1° of Act 26,032.
38 The term "new" is used as it was enforced in August 2015.
39 Manila principles on intermediaries' responsibility. Guideline for best practices that determine the content intermediaries' responsibility on the promotion of freedom of expression and innovation. March 24, 2015.
40 The bill has been approved on the Senate and sent to the lower chamber for its revision together with bill S-1865-2015.
41 See bill's sections 4° and 5°.
42 See bill's section 7°.
43 See bill's section 6°.

specifically regulate the right to be forgotten. It also has other omissions: a) it does not regulate violations to the intellectual property rights, b) it is not on the same wavelength with the duty of not damaging and damage prevention established in section 1710 of the Argentine Republic´s Civil and Commercial Code, and c) it omits the creation of a protocol for notification and rapid deletion of illegal or injurious content that the CSJN classified with special care.

On the other hand, and with relation to this, there is another bill S-444/2015[44]- that focuses on a regulation that warrants that all individuals shall exercise their right of suppression contemplated on section 16 of Act 25,326 - protection of personal information-, of certain indexed-linked content by the search engines resulting from a search under an individual's name.

There were other bills on the Argentine Republic´s Senate. Among them, it is worth mentioning, even though it is no longer in the docket[45] - bill 1918/14[46] . This bill established that companies providing internet service to final users have the duty to install filters that shall block the access to the list of restricted access sites determined by the National Communications Commission.

V. - BRIEF FINAL CONSIDERATIONS.

The right to express oneself through the Internet encourages the freedom of expression from an individual dimension as well as from a collective dimension. Through the Internet, it can be plausible the personal right each individual has to make public, transmit, share and exteriorize ideas, opinions, beliefs, critics, among others. As from the collective dimension, Internet constitutes an instrument to guarantee the information's liberty and the formation of public opinion.

Nevertheless, when we refer to the right to be forgotten, figures behind this issue are significant. Intermediaries receive many fake requests to remove data. In the context of the "right to be forgotten", Google revealed that it received 1.6 million requests to remove websites, and that almost 57% of the requests did not represented a valid judicial claim in agreement with the Law on the Right to be Forgotten passed by the European Union[47] .

In this context, and different to what the CJEU did, the Argentine Supreme Court gave the judicial authorities the power to decide whether to remove or not the information[48] . Also, it is related to previous judicial precedents of the Argentine Supreme Court regarding the protection of freedom of expression; according to the Supreme Court, in a democratic regime, press freedom represents one of the liberties with more entity, to the extent that, without its due protection, there would be a deteriorated democracy or a purely nominal one[49] .

In the end, every restriction, sanction or limitation to the freedom of expression in Argentina shall be subject to a "restrictive interpretation" [50]. Therefore, we are of the opinion that the judicial precedent of the Supreme Court has been inclined preponderantly to the application of the mentioned liabilities due to the abuses caused during their exercise, by the commission of crime or illicit civil acts[51] . The Rodriguez judgment is aligned to this.

Finally, as supported by several authors, it is believed that it is important that Argentina moves forward in the legislation on this matter[52] , such as other countries of the region, like Brazil[53] , Chile[54] and the United States of America[55] did.

Also, the re-interpretation of Section 13.3 of the American Convention on Human Rights shall be considered in relation to this issue. This provision states that "right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions". [56]

In conclusion, to copy the European scheme, at least in totum, does not seem as a suitable idea. On the contrary, the historical and current context of human rights in Latin America shall be considered, mainly in what refers to freedom of expression and its compatibility with the right to be forgotten.

44 Text available at: http://www.senado.gov.ar/parlamentario/comisiones/verExp/444.15/S/PL
45 Expired in February 2016 and has been filed.
46 Text available at file:///C:/Users/usuario/Downloads/S1918-14PL%20.pdf
47 Keller, Daphne, "*The right to be forgotten: from Europe to Latin America*", in Del Campo, Agustina: "*Towards an Internet free of censorship II. Perspectives in Latin America*", CELE, University of Palermo, 2017, page 181.
48 An important critic to the judgment "Google Spain" is that it effectively delegated the decisions that balance the intimacy and freedom of expressions right of the users "in the hands of foreign technological companies; instead of delegating said liability in national courts". Keller, Daphne, "*The right to be forgotten: from Europe to Latin America*", in Del Campo, Agustina: "*Towards an Internet free of censorship II. Perspectives in Latin America*", CELE, University of Palermo, 2017, page 188.
49 Judgements: 331:1530, among others.
50 Judgements 316:1623.
51 Judgements: 119:231; 155:57; 167:121; 269:189; 310:508, among many others.
52 Tomeo, Fernando, "2012 goes away with technology but without law"" and "The right to be forgotten in the web is forgotten" available at: http://www.lanacion.com.ar/autor/fernando-tomeo-1560; Pucinelli, Oscar, "*The right to be forgotten in the right of Data protection. The argentine case*," in Revista Internacional de Protección de Datos Personales, N°1, December 2012; Cárrega Alberto F., "Partial approval for the bill unifying liability of internet services providers", available at: goo.gl/JaJPLt
53 Act N°12,965 (Civil framework of the internet,) April, 2014.
54 Act 17,336, amended by Act N°20,345, on May, 2010.
55 Section 230 of Communication Decency Act. Without prejudice of application, according to the case, of the Digital Millenium Copyrights Act, year 1198.
56 American Convention on Human Rights, article 13.3

E-conférence, droit à l'oubli en Europe et au-delà
E-conference Right To Be Forgotten in Europe and beyond
PART 3 : THE RIGHT TO BE FORGOTTEN BEYOND THE EU
THE RIGHT TO BE FORGOTTEN IN ARGENTINA