The right to forget/be forgotten

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Extended abstract

This study attempts to conceptualise the right to forget/be forgotten, which would have to be protected by a legal scheme, along with building a theoretical foundation of this individual's right and to examine the social necessity to establish the right in the current socio-technological environment. Although the mentation of forgetting as well as remembrance is observed in organisations, communities and states (Shimokobe, 2000), the study focuses on forgetting as human mentation. The right to be forgotten has recently started to be discussed (e.g. Werro, 2009) and European Commission's press release on 4 November 2010 mentioned that people should have that right when their data is no longer needed or they want their data to be deleted in the context of personal data protection (European Commission, 2010). In addition to the right to be forgotten which is centred on individuals' capability to control their own personal information on the Web as well as stored in organisational databases, the authors propose the concept of the right to forget which relates to the restriction of organisations' and individuals' ways of using personal information and, thus, the scope of which is beyond personal data protection, based on the idea that people, as individuals, have already lost the power to control the circulation of their personal information and it is extremely difficult for them to regain that power (Murata and Orito, 2008).

Behind the study objectives is the authors' concern about negative impacts of the externalisation of

human memory on intellectual activities and growth, happiness and dignity of each and every human being. In the business administrative context, Simon (1976) pointed out that human memory may be either natural or artificial, and for any kind of memory to be useful there must be mechanisms that permit the memory to be drawn upon when needed. Actually, the permeation of information and communication technology (ICT) centred on database and network technology throughout society brought about the progress of artificialisation or externalisation of human memory; organisational databases and the Web are now considered to substitute a large part of human memory. This, with the global spread of market-economy principles, caused a technology-driven social change from Foucauldian disciplinary society to Deleuzian environmental control society (Azuma and Ohsawa, 2003; Foucault, 1975; Deleuze, 1990) which has resulted in the socio-economic environment where eternal, unambiguous human memory outside human brains, which is continually updated by 24/7 electronic surveillance systems, is relentlessly used for providing personalised services by business organisations and for public security and safety and people's reliable livelihoods by public organisations. In this environment, however, people are forced to refresh their memory or prohibited to forget the past of them through being provided the personalised, paternalistic services based on digital records stored in the external human memory. Such services seem to presuppose that the future of people is an extension of the past of them. Of course, this is not necessarily true; people can get over the past and may desire to settle and forget the unfortunate past. Actually, human beings have an ability to forget selectively. We have to look at the bright side of forgetting. In the current technological circumstance where the dream of the total recall will likely come true, if we fail to establish the right to appropriate forgetting/being forgotten, it would become difficult for us to construct our own identity and narrative at our discretion. Ricoeur (2000) provides rich suggestions on this point. Moreover, Carr (2010) points out that "our most creative and conceptual thinking often emerged from the complexity of the connections among the memories stored in our mind. Biological memory is the seat of the unique self as well as the foundation of a rich culture. If we outsource our memory to external databases, we begin to destroy that foundation." His comment suggests the social significance of the right to forget/be forgotten.

In this study, forgetting is defined as an intellectual/mental state of a person where he/she doesn't recall a fact that (has) happened in the past or information that he/she knew in the past and/or images, feelings and sensations related to the fact or the knowledge. Glorifying a past event or having erroneous human memories is a kind of forgetting. There is variety in the degree of forgetting. Anyone experiences a momentary lapse of memory and short-term or mild forgetting. In human brain's long-tem memory, there are a lot of things which one never recalls even when relevant or trigger information to them is provided to him/her.

Forgetting is quite natural mentation for human beings. Whereas many people suffer morbid forgetting due to aging or disease, anyone experiences wholesome forgetting more or less. This relates to maintenance of peace of mind and creation of spiritually affluent lives through surmounting fault, shame and PTSD; sound mental growth including self-transcendence; positive human relationship-building based on, for example, forgiveness (although it can be a far deeper and richer phenomenon than forgetting as Enright (2001) and Konstan (2010) suggest); and establishment of personal identity. However, as a result of the development of an advanced information and telecommunication society, the wholesome functioning of forgetting has substantially become underestimated.

On the other hand, the total recall in computing or unlimited capacity of computer data storage and retrieval had been a long-cherished dream or indisputable good for ICT engineers as well as users. In fact, ICT engineers in the early days of computerisation had to be careful not to waste valuable data storage capacity. Floppy disks, which were widely used from the early 1970s to the end of 1990s, were well-received as a handy removable storage that could store data (semi)permanently. When the concept of data warehousing systems was proposed in the early 1990s, an attractive aspect of that system concept was that data collected and stored were never erased and would be used permanently.

Even today when the ICT environment in which engineers don't ordinarily need to care about a shortage of data storage capacity and can enjoy ultrahigh-speed arithmetic processing and communication has been developed, many people seem to remain to believe that the virtue of the total recall should be pursued. A variety of ICT-based (pseudo-)personalised services public as well as private organisations provide to their individual customers presume permanent storage, continual or real-time update and automated processing of detailed personal data of a huge number of people. For example, dataveillance systems, ubiquitous computing systems and lifelog business systems are operated by organisations in order to acquire useful business information which results in their outstanding personalised customer services and, thus, excellent business performance through collecting every type of personal data in real time, storing them permanently and processing them using proper techniques like collaborative filtering and behavioural targeting. Bell and Gemmel (2009) who have undertaken the MyLifeBits project (http://research.microsoft.com/en-us/projects/mylifebits/) at Microsoft advocate the advantages and benefits of recording one's entire life digitally. They point out that thanks to the Total Recall Revolution we will soon be able to be released from the fate of forgetting and thereby live an affluent and happy life in a humane manner.

People, at least in the industrialised countries, are now living in the environment where ICT has

become prevalent in all areas of their lives and economy. They enjoy tremendous benefit provided by ICT-based information systems various organisations set up and operate. On the other hand, however, as the consequence of the widespread or ubiquitous availability of ICT, people seem to be forced to remember, for example, their past attitudes, behaviour and experiences and, in addition, even their lineage and genetic characteristics which they would forget if they didn't live in the current ICT-dependent society. In fact, information systems, particularly dataveillance systems, organisations develop and deploy collect their existing and potential customers' personal information such as on purchasing activities and spatial location in nearly real-time fashion, store it in databases without discarding anything and automatically process the accumulated information to provide the customers with personalised services. User generated media like blogs, electronic bulletin boards, social networking services and Twitter enhance individual users' revelation of their own and others' personal information and such openly accessible online information can easily be retrieved, copied, stored, used and circulated by organisations as well as individuals. Both organisational databases and the World Wide Web, a hypermedia database, can now function as externalised human memory, over which memory subjects can hardly exert control. There are some Net users who wish to externalise their personal memory using online services provided by, say, My Yahoo! and iGoogle. Lifelog technology (Allen, 2007) would promote the externalisation of human memory in a through and infallible manner.

However, every time people access some online data related to them involuntarily or by chance or receive unexpected personalised services based on their personal information stored in organisational databases, they may be coerced into refreshing their memory which may contains what they wish to forget. Is this the inevitable fate of them or a price they have to pay in return for enjoying the benefit provided by ICT-based information systems? Why can't they require others (including both organisations and individuals) not to reminder them of what they forget on its own or wish to forget? Isn't it reasonable for them to expect that they can forget something about themselves and are forgotten by others appropriately? In the circumstance where, amongst the four modalities of regulation of human behaviour (Lessig, 1999), markets and technological architecture function so that people are not allowed to, even appropriately, forget the past of them and the existing social norms don't hinder such function, the right to forget/be forgotten may have to be established as a legal right, although forgetting is quite natural mentation for human beings.

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