



## Intellectual Privacy: Rethinking Civil Liberties in the Digital Age

Author \_ Neil Richards

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Reviewer \_ Dr. Michael Zimmer, School of Information Studies,  
University of Wisconsin-Milwaukee

Traditionally, the context of the library brings with it specific norms of information flow regarding patron activity, including a professional commitment to patron privacy. In the library setting, a patron's intellectual activities are protected by decades of established norms and practices intended to preserve patron privacy and confidentiality, most stemming from the American Library Association's (ALA) Library Bill of Rights, which begins with the premise that everyone is entitled to freedom of access, freedom to read texts and view images, and freedom of thought and expression. The ALA has repeatedly confirmed the importance of patron privacy as a necessary ingredient in preserving intellectual freedom, and its Office for Intellectual Freedom (OIF) has been defending and advocating for privacy rights for nearly forty years. As a matter of professional ethics, most libraries protect patron privacy by engaging in limited tracking of user activities, instituting short-term data retention policies, and generally enabling the anonymous browsing of materials. These are the existing privacy norms within the library context and the cornerstone of what makes up the "librarian ethic."

However, these norms are being increasingly challenged from numerous fronts: law enforcement and government agencies continuously pressure libraries to turn over data on patron activities; new so-called Library 2.0 tools and similar internet-based services promise to improve the delivery of library services and enhance patron activities, while

simultaneously fostering the tracking, collecting, and retaining of data about patron activities; and given the dominance of social media—where individuals increasingly share personal information on platforms with porous and shifting boundaries—librarians and other information professions are confronted with possible shifts in the social norms about privacy.

It is within the context of these challenges that Neil Richards, a professor of Law at Washington University in St. Louis, has published *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age*. Writing as a law scholar, Richards' defense of intellectual privacy is largely motivated by a growing concern over the conflict between free speech and privacy: whether we can reasonably restrict the access, sharing, and publication of personal data, yet still protect the First Amendment principles of a free society. His goal, in the most basic—but also most audacious—sense, is to illuminate a new path for safeguarding civil liberties in the digital world.

The book is divided into three parts. Part 1, "The Limits of Tort Privacy," describes the tension between free speech and the right to privacy through the lens of traditional tort law. Here, Richards introduces the conflicts between privacy concerns and freedom of speech through the question, "How does one distinguish the public's right to know and the individual's right to privacy?" He explores the limits of disclosure for celebrities, ordinary people, and explicit information of a sexual nature, and how we can treat such information

disclosure without compromising the dignity of individuals. Tracing privacy law from Brandeis to the new so-called "right to be forgotten," Richards reveals how complex balancing our rights has become in our contemporary digital world.

Part 2 starts to reconcile this tension between privacy and free speech by introducing the reader to "The Promise of Intellectual Privacy," which Richards defines as the "protection from surveillance or interference when we are engaged in the process of generating ideas—thinking, reading, and speaking with confidants before our ideas are ready for public consumption."

Though freedom of thought and belief is core to intellectual privacy, and the protection of intellectual privacy is, in return, necessary for a robust culture of free expression, Richards notes how law—in its current form—remains insufficient to ensure the fullest protection of this right. In an increasingly digital information environment, where our searches are logged, our reading habits monitored, our browsing is tracked, and every click of the mouse is captured, current legal frameworks for protecting intellectual privacy are rapidly being destabilized.

Part 3, "Information Policy and Civil Liberties," proposes a path forward, describing means for both the promotion of freedom of speech and the protection of intellectual privacy in the midst of an increasingly digital and personalized world. Richards suggests numerous steps that must be taken to bolster intellectual privacy,



including embracing the existing Fair Information Practice Principles (FIPPs) which attempt to limit how personal information is collected and used, recognizing how intellectual data (our reading habits, search histories, and the like) are just as sensitive as personally-identifiable information period. Richards also suggests rejecting the notion that privacy is merely a binary condition (either a piece of information is private, or it is not), and instead embracing a more fluid and contextual approach to recognizing

the “intermediate states” between fully public and fully private.

At the heart of Richards’ important book is a cautious—but vital—balance of privacy and freedom of speech. He states,

My argument about freedom of thought in the digital age is this: Any technology that we use in our thinking implicates our intellectual privacy, and if we want to preserve our ability to think fearlessly, free of monitoring, interference,

or repercussion, we should ensure these technologies with a meaningful measure of intellectual privacy.

The book’s primary argument, that intellectual privacy is vital to a robust culture of free expression as it safeguards the integrity of our intellectual activities by shielding them from the unwanted gaze or interference of others, should resonate well for all librarians and defenders of intellectual freedom and privacy.

## Ctrl+Z: The Right to Be Forgotten

**Author** \_ Meg Leta Jones

**Publisher** \_ New York University Press, 2016. 253p. Cloth (also available as ebook). \$29.95.

ISBN: 978-1-4798-8170-3

**Reviewer** \_ Clem Guthro, Colby College

Meg Leta Jones’ book joins a number of other recent books on the right to be forgotten (R. Fellner, *The Right to Be Forgotten in the European Human Rights Regime*, 2014; A. Ghezzi et al., *The Ethics of Memory in a Digital Age: Interrogating the Right to be Forgotten*, 2014; and J. A. Serralbo, *The Right to Oblivion*, 2013). Jones attempts to make the right to be forgotten understandable to a broad audience, specifically to those with a US perspective. She shows the fundamentally different approaches to personal information between Europe and the United States and lays out how those differences inform the actions of the European Union in advancing the right to be forgotten. The right to be forgotten grows out of the cultural and legal tradition of Europe and is predominantly instantiated in the European Union Data Protection Directive (EUDPP). While written in lay language, it does require close reading to grasp some of the finer points of the EUDPP.

Jones advances the idea of “digital redemption” as a way of thinking about transforming “digital public information into private information upon the subject’s request.” She ties this to the idea of forgiveness and its psychological and social value, noting that the discoverability of outdated, inaccurate or harmful information prohibits forgetting by the individual or society. The right to be forgotten can be seen as an avenue for digital redemption and reinvention.

Using a comparative approach Jones closely examines Europe’s long history of privacy regulation and compares it to the equally long but different view of privacy that has evolved in the United States. Jones situates the right to be forgotten predominantly in the context of the continental European tradition of individual personality rights, most clearly expressed in German, Swiss, and French law. She notes that the predominant difference between European and American information policy is the default for sharing. The United

States generally permits the collection and transfer of personal information with an opt-out model while the European model uses a comprehensive regime that protects personal information with the default of not sharing. This fundamental difference as well as the strong European tradition of dignity, honor, and the right to a private life supports the idea of the right to be forgotten. Elements of a “digital right to be forgotten” is instantiated in the EUDPP but it is not sufficiently well developed; a “data controller” (e.g., Google) would not have clear and unambiguous guidance on legally responding to a right to be forgotten request.

While the internet is not a library designed for long-term preservation of all its information, the complexity of the internet has also made forgetting impossible. Within the US context, Jones argues that the legal culture and large weight of freedom of expression inhibits serious conversation and possible solutions. Arguments for the integrity of the



historical record, protection of information that is deemed newsworthy or that the public has the right to know, often overrules serious discussion or consideration of digital redemption. She notes that digital forgetting is attempting to address information that is now outdated, irrelevant, or inaccurate but because of the inability to remove it from the internet, it haunts individuals and causes harm.

Jones argues that the issues raised by right to be forgotten are strictly not privacy issues because the information in question was properly disclosed at the time but have become problematic over time. While this seems overly simplistic as an overall stance, most of the cases Jones cites do stem from information that was originally collected in a legal and ethical manner but became problematic over time through a change in circumstance, or through use and reuse. She sees the right to be forgotten as an attempt to address real or perceived threats of information being collected, leaked, shared, and analyzed in ways that threaten identity, reputation, authority, and privacy.

Recognition of the impermanence of digital information, according to Jones, allows a reframing that can be helpful in thinking about digital redemption. In the end she sees the world dividing into preservationists,

those that believe everything on the internet should be preserved, and deletionists, those who believe that some information should be deleted. Both perspectives are part of information stewardship, and decisions on what to maintain and what can and should be deleted are made in ways that may or may not be helpful.

Ideas of digital redemption and the right to be forgotten are clearly situated within the legal cultures of the world and cannot and should not be approached as if a harmonized approach is possible. While the right to be forgotten is clearly situated within the EU's focus on personal privacy as a fundamental right, she argues that the United States should find ways to address the need for digital redemption. While US protection of freedom of speech makes an overall legal approach difficult, Jones argues for allowing decreased discoverability, offering anonymity, limiting the use of personal information, and adding information to provide context and accuracy.

Jones delineates the global stakes in the right to be forgotten and the need to work in an interoperable approach between and among legal jurisdictions, data controllers and data providers. There will undoubtedly be conflicts between the EU law and US law over right to be forgotten requests

and in how data imported between countries is handled, especially if it contains personal data. Google, because of EU directives, has developed some formal guidelines on how it will comply with right to be forgotten requests. Jones argues, however, that guidelines are best done at the national legislative and regulatory level and not at the data controller level.

Jones makes only oblique references to libraries in the ideas of "information stewardship" but does give a more material nod to the archival community and likens the right to be forgotten requests to be somewhat analogous to the work of the archival community in how they deal with sensitive materials in their archives where material is often restricted and perhaps at times expunged to protect those who are still alive.

This book is appropriate for librarians, information professionals, lawyers, and policy makers concerned with managing information access, stewardship, and privacy. Anyone intrigued with the right to be forgotten or who wrestles with wanting to erase part of their digital past will find this book informative and useful. It could also be used in library and information science programs for courses on information policy.

## Where Are All the Librarians of Color? The Experiences of People of Color in Academia

Editors \_ Rebecca Hankins and Miguel Juárez

Publisher \_ Library Juice Press, 2015. 341 pp. Paper. \$45.00. ISBN 978-1-936117-83-3

Reviewer \_ Martin Garnar, Dean, Kraemer Family Library,  
University of Colorado Colorado Springs

In the very first paragraph of the introduction to this important volume, the editors felt the need to justify the existence of this book, as they were

told that there were many articles and books on the topic of diversity in the library profession and that another book did not seem necessary.

They reasoned that if there are many books on information literacy and digitization in librarianship, why not have more books on diversity? In



reality, they could have pointed to the fact that a search of WorldCat finds roughly ten books on the topic in the last forty years, and very few of those focus on the firsthand experiences of librarians of color. Even the more numerous articles show the limited variety of scholarship in this area, as many of the same titles are cited over and over by the chapters within the book. The title reflects the profession's frustration with virtually no change in the proportion of librarians of color since the creation of high-profile programs like the ALA Spectrum Scholarships, and the book's three sections not only cover recruitment of students of color into library and information science programs, but look at the issues that have kept the numbers low when compared to the demographics of the general population.

In the first section, "Setting the Stage for Diversity in the Profession," the various chapters look at some of the factors related to attracting and keeping people of color in the academic library profession. The availability of scholarships is not, by itself, enough to increase the number of students of color in LIS programs, and the first chapter examines Discovering Librarianship, a recruitment program sponsored by the ALA Office for Diversity that asks librarians of color to tell their stories and help convince potential students to consider the profession as a viable option. Another chapter examines the importance of building a professional network, reviewing options for professional associations outside of ALA that focus on specific ethnicities, and advising librarians on how to make connections outside of the library as well as across institutions, acknowledging the reality that many librarians of color may be the only diverse person not only in the library, but also in the larger campus community. Mentoring programs

are discussed in a few places within the first section as a crucial aspect of the overall retention plan. A promising study of the impact of mentoring programs for newer librarians of color reveals that the primary result is a greater loyalty to the institution rather than the profession in general. However, as acknowledged by the authors, the study asked librarians to predict whether they would be likely to remain at their institution or in the profession, but does not provide any longitudinal data on the actual effect of mentoring on retention. Another chapter briefly reviews the history of diversity resident programs before looking at the importance of terminology when referring to residents, as those who found themselves being called interns had a very different experience in these programs designed to give new librarians of color a first professional position and possible pathways for continued employment at the host institution.

The editors write that the second section of the book, "How Diversity Benefits the Profession," is designed to demonstrate that "diversity promotes excellence" using essays that give examples in support of the statement, but more often highlight how the profession has failed to take advantage of what librarians of color have to offer. Compared to the other sections of the book, this section has less conceptual coherence. The opening and closing chapters have a more theoretical approach to the failures of historical and current diversity efforts, while the middle chapters seem better suited for the book's third section of personal stories. Despite the organizational disconnect, the individual chapters are worthwhile. On the theoretical side, Shaundra Walker's application of critical race theory to the question of diversity in librarianship exposes the structural racism inherent in the LIS

educational system and in the appointment, tenure, and promotion process. Walker also provides a counterstory of her own negative experiences to balance the positive narratives that tend to get promoted when reporting on diversity efforts. Meanwhile, co-editor Rebecca Hankins's essay on racial realism offers another lens for librarians of color to understand their situations and move forward in spite of the barriers that still exist. On the more personal side of this topic, Akilah Shukura Nosakhere's account of perseverance despite institutional and collegial support that is lukewarm at best highlights the importance of positivity, while Vince Lee's story of his archival career demonstrates that being an archivist (or librarian) of color does not automatically guarantee entry into or engender trust with marginalized communities.

The third section, "Personal Diversity Stories," delivers what it promises. The first two chapters share the stories of librarians at two different academic libraries, and comparing the two demonstrates the positive impact a diversity residency program can have. The third chapter, by Roland Barksdale-Hall, combines the author's own experience with the story of a mentor to demonstrate that there has been some progress, but there is still a long way to go. The final chapter does include the personal story of the author (Miguel Juárez, the other co-editor), but serves more as a conclusion for the entire book, as Juárez uses this opportunity to evaluate the current state of affairs (bleak at best) and issue a wake-up call: efforts to support diversity are not working, and changes must be made if the profession is going to live up to its commitment to welcome and affirm librarians of color.

As the library and archive profession continues to question the efficacy of recent initiatives to increase the



representation of marginalized groups within the field, this book suggests that major changes are needed in the profession's approach to live out its commitment to diversity and inclusion, as the evidence compiled in this volume points to mixed results at best,

with some level of failure as a more likely conclusion. Juárez notes that he wishes his essay "would become happier right here and we could all hold hands across the library boardroom and sing *kumbaya*," but he is unable to get past the realities of

micro-aggressions and the barriers they pose for librarians of color. This book does an excellent job of enumerating the challenges still facing librarians of color. What is needed in a future volume are more success stories, but first they must be created.

### Seeking Nominations and Applications for Editor

The ALA Office for Intellectual Freedom seeks an Editor for the *Journal of Intellectual Freedom and Privacy*, a quarterly journal dedicated to both professional discourse and current news about intellectual freedom and privacy issues in libraries. The Editor will be responsible for overseeing the journal's editorial content and working with its volunteer editorial board to shape the journal's direction. Responsibilities include soliciting and editing long-form submissions and book reviews, overseeing the peer review process for submitted manuscripts that require review, and working with the news editor and OIF staff to identify and develop content for the journal's censorship news and court reports sections. The position is part-time and editors are compensated on a per-issue basis.

Candidates should ideally have an advanced degree in library and information sciences, law, or humanities and a strong background and interest in intellectual freedom, privacy, and professional ethics.

Interested candidates should send letters of inquiry to Deborah Caldwell-Stone, Office for Intellectual Freedom, American Library Association, 50 East Huron Street, Chicago, Illinois, 60611. Correspondence may also be sent electronically to [dstone@ala.org](mailto:dstone@ala.org).