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Thirteen languages. Ten principles. One conversation.

TW on the right to be forgotten

Interview by Timothy Garton Ash, director of Free Speech Debate

TGA: The other great legal norm/rule setter, besides the United States and obviously China in its own way, is the EU. The EU is just proposing a new data protection directive with a very extensive understanding of privacy and notably a right to be forgotten. What do you think of that?

TW: You know, it's interesting. I don't have a simple answer. I've been in FTC [Federal Trade Commission of the United States] for a year and much closer to privacy enforcement than I had been before. As a consumer I believe very strongly in the ideas of privacy and I think most people would love a right to be forgotten. They would find that to be a terrific thing in their life. There is a part of me - and this may sound inconsistent with other things I've said - but there's a part of me that is uncomfortable with the amount of governmental oversight that is required over everything on the internet. And, as a practical matter, one wonders if it creates too much of a regulatory apparatus that it becomes a restriction itself on a different kind of free speech which is sort of more of a right to innovation. The thing about the internet is that it's been a relatively low-cost and easy place to set up. New companies try out new ideas and experiment. If every company that is close to Europe has to figure out a right to forget scheme - for a network that tends to remember, as opposed to forget - I am concerned about the impact on new entry. And I'm concerned that ultimately if you imagine a sort of stable series of monopolies - Facebook, Google, Twitter, and so forth - if you imagine those companies have perfectly-designed right to forget schemes, which they battle Europe with, but that their newer competitors don't, you can see the regulation used against them as an anti-competitive tool. So, I like the ideas of these schemes but I'm concerned about their potential competitive consequences.

TGA: That's very interesting, but just to be clear: you have some sympathy for the privacy demand, including the right to be forgotten.

TW: Of course.

TGA: But the law of the unintended consequences might be...

TW: And it's the anti-competitive consequences that I'm concerned about. That is to say, once you have a complex mandatory scheme, it tends to be the bigger, more experienced companies who understand it, can hire people to make sure they comply with it, and it tends to be would-be newcomers who are burdened by it. And so, I think that has to be carefully thought through. In other words, I think what needs to be thought through are the consequences for competition and market entry. Also it ultimately links to free speech because it is companies in their earlier stages who tend to be the greatest agents of free speech: early Google, early Twitter, early radio, early telephone. It's when they're young and in the inspired phases of their lives the companies do better things usually, and if we have a privacy regime that insulates what is becoming a border I'm concerned about the dynamic effects of that.

TGA: That's a very interesting thought. Actually, global free expression requires young companies. It requires, so to speak, regeneration.

TW: Yes, regeneration, a churning. Because the older and larger a company gets, the less interested they become. In some ways free speech is very linked to the spirit of entrepreneurialism because you need an environment of relative permissiveness to try out new ideas. They are very closely linked: the ideas of closing down competitors and closing down speech. They are often exactly same tools. That is my concern with Europe's privacy regulation, even though, as an individual, I happen to quite like many ideas like the right to be forgotten, and would love a little button which says "Forget me".

TGA: So the paradox or at least the irony here is that European attempts to defend the rights of the single individual might end up strengthening American corporate giants.

TW: That's actually a good way of putting it. What I'm trying to resist is a repetition of what often has happened in communications history, which is the creation of a regulated monopoly.

TGA: Do you think it's happening now?

TW: There are some signs. And I have to say that it would be privacy law which is leading the way. At the Federal Trade Commission, for example, it's not there yet but there are in place pretty extensive privacy programmes for Google and Facebook and

that's, say, the camel's nose, that's the beginning. Once you have a few bigger entities under state supervision it becomes a cosier relationship and I think there's always a tension between the government's interest in having large entities that it can control and its supposed interest in competition and free speech.

TGA: Tim Wu, thank you very much for talking to Free Speech Debate.

This is a transcript of the interview prepared by a member of our team. In case of doubt, the spoken version is authoritative.