

Obscurity.

Essay, research and theory by Paolo Cirio. 2016.

<http://obscurity.online>

Obscurity cloned the major mug-shot websites and scrambled their databases to obfuscate the information on over 15 million individuals arrested in the U.S. over the last 20 years. The mug-shots have been blurred to make faces unrecognizable while their names have been shuffled by an algorithm that samples data based on common age, race, location, and charges, all of which are kept accurate in order to provide social context on the actual individuals arrested and the crimes they were accused of when they were booked in jail.

About the Artwork

Obscurity explores the emotional underpinning of unflattering personal information exposed on the Internet. It makes the audience feel personally concerned over their own reputation and empathetic towards others affected by the lack of control over such personal information. The artwork also aims to evoke discomfort by allowing the public to face the uncomfortable paradox of judging and forgiving individuals while possessing only minimal information on the socioeconomic context in which they have been accused of a crime.

Control and access to information, the right to privacy, mass surveillance and profiling, and the system of participation within social dynamics are explored in this socio-critical Internet artwork. Ultimately, the project questions the legal frameworks surrounding public policies on privacy and profiling of citizens and engages the public in a debate about them.

In these early years of the Internet, the cultural and social norms regarding how we want to appear and communicate online still need to be formed. Matters of exposure, shame, humiliation, and stalking in addition to transparency, obscurity, accountability, privacy, and surveillance have yet to be civilized in the new space we live in.

The *Obscurity* artwork deploys strategies that are oriented to problem-solving as a form of Internet social art practice. By engaging with law, millions of individuals, bad business practices, and general public opinion, this artwork seeks to embody a practical discourse about the aesthetics, functions, and ethics of information systems affecting social structures that resonates within and outside the contemporary art dialogue.

The provocation against the mug-shot industry aims to generate interactions with the general audience, media outlets, affected individuals, and the owners of the mug-shot websites themselves. As these interactions unfold, the artwork would take the form of an art performance played within the mediascape. The performance is designed to engage an online audience and allow them to participate in the conflict created by the controversial artwork and in its eventual resolution negotiated between the artist, the targets, and the project's aims.

The presentation of the artwork *Obscurity* is visually striking with an compelling abstraction of the images of the mug-shots, which are the most representative documentation of the social alienation and mass incarceration that has taken place in the U.S. in the last few decades.

For the offline installation, the artwork is presented with printers and shredding machines that continually and instantly print and shred pictures of mug-shots. The installation also displays screenings and prints of mug-shots from the most significant incarceration cases, such as the youngest and oldest individuals along with the most common type of person found in the database assembled for the artwork.

How It Was Done

This artwork is made with millions of mug-shots, obtained through a screen-scraping software, from websites such as Mugshots.com, Usinq.com, Justmugshots.com, MugshotsOnline.com, etc. This project has cloned these mug-shot websites using similar domain-names and then shuffled the data associated with the individuals listed to obfuscate their identities.

The algorithm created for obfuscating the data makes sure that an individual's name and picture are never associated with the actual person arrested. It scans for individuals with a common gender, age, race, and location and shuffles their first and last names along with their respective mug-shots, while maintaining accurate all the other details about the individuals, including charges and the location of the arrest.

Then the algorithm republishes this data on the open web using search engine optimization (SEO) techniques to boost the search rankings of the cloned websites and promote the version with the scrambled criminal records. The republished obfuscated data maintains the layout and watermarks of the original mug-shots, and by using similar domain names the project would effectively interfere with the activity, reputation, and business of mug-shot websites.

About the Publication of Mug-shots in the U.S.

Mug-shot websites have been exposing tragic photos of people who have been arrested regardless of the amount of time spent in jail, often just for minor offenses, or even if they were later found to be innocent or the charges against them had been dropped.

These websites are designed to embarrass and shame since searchable booking photos can effectively ruin someone's reputation with social stigmas and attendant prejudgments in their communities, families, and workplaces, especially when they are seeking employment, obtaining insurance or credit. These mug-shots are often of the most vulnerable members of society: victims of mass incarceration, economic inequality, and racial discrimination, along with those who lack treatment for mental illness, in a country with poor welfare policies, coupled with a severe criminal justice system and unforgiving law enforcement agencies.

The online mug-shots problem came to public attention in 2013. Since then, the number of these websites has multiplied, and existing websites continuously change their brand name in order to keep collecting and monetizing on mug-shots.

United States has the highest rate of imprisonment in the world. Every year in the U.S., city and county jails across the country admit between 11 and 13 million people. Approximately 2.2 million people are currently locked up in the U.S. Of those in jail, 60 percent haven't been convicted of anything.¹ Of the non-convicted defendants behind bars, 75% of them are held on non-violent offenses.²

Currently, there are dozens of mug-shot websites posting new mug-shots daily and search engines such as Google still index the records and serve advertising for them.

The publication of booking photos online is legal under the freedom of information and transparency laws in most U.S. states. Furthermore, many freedom of press organizations and legislators³ have been opposing bills that would regulate the publication of mug-shots. Already many federal bills related to mug-shots have failed or have been pending for years.⁴

1 Nick Pinto, "The Bail Trap," New York Times, August 13, 2015.

<http://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html>

2 Chandra Bozelko, "The cash bail system should be eliminated rather than reformed," Guardian, February 5, 2016.

<http://www.theguardian.com/commentisfree/2016/feb/05/the-cash-bail-system-should-be-eliminated-rather-than-reformed>

3 Wikipedia, s.v. "Mug shot publishing industry," last modified January 14, 2016.

https://en.wikipedia.org/wiki/Mug_shot_publishing_industry

4 "Mug Shots and Booking Photo Websites," National Conference of State Legislatures, December 11, 2016.

<http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx>

Mug-shot websites monetize by placing advertising of reputation management services alongside listed booking data or they often charge a picture removal fee. The controversial request for payment to remove mug-shots has led some state legislatures to propose bills to regulate the industry to comply with the right-of-publicity statute, which gives individuals some control over the commercial use of their name and likeness.⁵ They also violate extortion laws since removal and online reputation services can charge thousands of dollars⁶ to remove mug-shots. However, some mug-shot websites operate in offshore jurisdictions and their owners are in hiding,⁷ which makes difficult any kind of legal and effective action to remove the mug-shots and crack down on extortionary practices such as demanding a fee to stop their dissemination online.

And yet, the simple publication of mug-shots across the internet still hasn't been regulated nationwide in the U.S.

Search engines such as Google are complicit as they could do what no legislator could—demote mug-shot sites and thus reduce, if not eliminate, their power to stigmatize. Commercial search engines collect and exploit as much information as possible in order to monetize on data analysis and brokerage and sell it to advertisers. Any information taken out from search results might affect a search engine's profit, and as such they will always oppose and slow down any removal of personal information from their datasets. The core business model of most search engines that profile people is often unscrupulous by design.

About the Participation of the Public.

A participatory element of the project allows anyone to both judge typical criminal case scenarios sampled from the database and send a complaint to search engines and mug-shot websites. The visitors of the cloned mug-shot websites, as participants of the online artwork, are able to decide whether to report individual profiles or instead keep them public by opting between two buttons, "Remove it" or "Keep it."

This form of participatory judicial system would explore the philosophical and ethical nuances of forgiveness, accountability, public shaming, privacy, and security directly, by allowing the public to both judge individuals and remove their information from the Internet, or decide to keep it online, which also points at the accountability of the process of judging and granting mercy and forgiveness.

Currently, some online mug-shots are over ten years old, related to low-level or nonviolent crimes such as driving without a license, court-related or soft drug offenses, without making distinction between people who are convicted, people whose charges have been dropped, people who are acquitted, and even includes children as young as eleven.

On the other hand, the mug-shots might be of dangerous individuals such as sex offenders and serial killers as well as public figures with social responsibility like bad doctors, corrupt politicians, or the owners of businesses with unfair practices and therefore they should circulate for public safety and social accountability. Nevertheless, the behavior of police officers is a matter of public record and the state of inmates should be monitored openly.

It's debatable whether the government and corporations, and not journalists and the public should decide whether such photos are newsworthy, with citizens as arbiters of what the public gets to see.

In this complex situation, *Obscurity* proposes a democratic judicial system that would help to understand crime as a community-related issue, bringing attention to the victims of mass incarceration in the U.S. and the unscrupulous criminal justice system and law enforcement agencies that created this situation.

5 WCPO Channel-9 Cincinnati, "Lawsuit goes after 'extortion' mugshot websites". Feb. 13th 2013.
<http://www.wcpo.com/news/local-news/lawsuit-goes-after-extortion-mugshot-websites>

6 David Kravets, "Mug-Shot Industry Will Dig Up Your Past, Charge You to Bury It Again ", Wired 2013.
<http://www.wired.com/2011/08/mugshots/>

7 Natasha Del Toro, Dan Lieberman, and Rachel Schallom, "The Digilantes Try to Find Out Who Is Behind Mugshots.com," February 9, 2016.
<http://fusion.net/interactive/252451/digilantes-mugshots-dotcom-investigation/>

Using an automated script provided by *Obscurity*, anyone who wants to participate is able to browse the cloned mug-shot websites and, based on their discretion, decide through the button "Remove it" to send removal requests of individual mug-shots to search engines as complaints for the publishing of unethical content and activity.

This social experiment of a participatory judiciary system would increase understanding and promote change concerning the ethical, legal, economic, and social contexts regarding personal information circulating online.

However, the main goal of the project *Obscurity* would be to report all the URLs of the mug-shot websites and advocate for statewide regulation on the publication of court information. More specifically, *Obscurity* proposes to keep all the information on civil cases filed in courtrooms and in law enforcement offices on web platforms that require registration to ensure that only qualified professionals are able to access certain data.

Ultimately, this art project would engage its audience in participating in petitions and open letters for a Right to Remove personal and sensitive information from search engine results in the U.S. In this way, *Obscurity* taps at the core need of introducing a form of the Right To Be Forgotten in the U.S.

About the Right to Remove

Personal information concerning ordinary citizens and the most vulnerable shouldn't be available on search engines since it violates their dignity, security, and right to privacy.

Obscurity would serve to examine the so-called Right To Be Forgotten, originally a European law that allows individuals to remove undesirable information about themselves by requiring that search engines comply with requests to remove sensitive personal information from their results.

However, the Right to Be Forgotten law, which indicates that information about an individual can be removed by law when it is "inadequate, irrelevant, or no longer relevant," is too vaguely defined and lacks accountability and transparency on the decision-making process as well as the kind of information that should be removed from search engines.

This socio-critical Internet artwork would advocate for the establishment of precise categories of information to be considered sensitive and therefore not publicly searchable on the Internet.

By collaborating with lawyers, legislators, and privacy activists, the Right to Remove would campaign for the introduction of an information policy in the U.S. that provides the right to demand deletion of specific types of information from search engine results as a form of right to obscurity by removing sensitive information that jeopardizes the privacy, reputation, and security of ordinary citizens.

While, the Right To Be Forgotten has been in effect in the European Union and Argentina since 2006 and in Russia since 2014, in the U.S. it remains strongly debated as a threat to freedom of speech and press rights. In particular, this law has raised several problematic issues surrounding public accountability with questionable criteria for granting the right to remove information as well as the power of search engines to decide these matters without public oversight. For example, Google is a private company that receives thousands of requests to remove links to online information regarding criminals, politicians, and private individuals, and in doing so it operates as a judge working case-by-case to decide whether certain information should be public or not.

The Petition for Right to Remove Personal Information on Search Engines in the U.S.

This petition is for promoting new legislation that should be enacted to provide citizens with privacy protection regarding their sensitive information being findable on search engines.

Personal information concerning ordinary people and the most vulnerable shouldn't be available on search engines because it violates their dignity, security, and right to privacy.

The Right to Remove would identify straightforward categories of personal information for the practical legal right to remove links and content from search engines results.

It is a right similar to the ideas of Right to Obscurity, Right to Delete, Right to Relevancy, or Right to Be Forgotten. However, for a targeted approach, the Right to Remove specifies categories of personal information that people should have the right to remove from Internet search engines.

The Right to Remove would be a simple and workable state bill to be introduced in Congress and enforced by the Federal Trade Commission.

Special categories of information that have an impact on the privacy and security of a subject's private life and should be part of a basic Right to Remove from search engines:

- Data about minors, posted by them or by any other parties.
- Data on criminal cases filed in courtrooms and in law enforcements offices.
- Data on victims, witnesses, lawyers, and judges of crime verdicts and their reporting.
- Data on civil courts cases and registries, such as minor offenses, divorces, marriages, deaths, and births.
- Data collected inside private property, workplaces, or governmental offices.
- Information of an intimate nature, such as family matters and relationships.
- Explicit sexual content, such as "revenge porn" or explicit material without an individual's consent.

- Information on sexuality or sexual orientations.
- Information on political affiliations and preferences.
- Information on religious beliefs and activities.
- Information on ethnicity, race, and citizenship.
- Information on the use of drugs for recreation.

- Data on a person's health, such as medication and diseases.
- Data on personal financial records, such as debts and assets.
- Data that uniquely identifies a subject, such as ID, car plate, or biometric data.

- Information that perpetually or periodically stigmatizes as a consequence of past situations.

None of these should be findable on Internet search engines under an individual's name. The right should apply only to ordinary private individuals, not businesses or public entities and personalities, which should be subject to another type of disclosure policy.

Notes on the Right to Remove

The Right to Remove is not a general deletion or obfuscation of information about an individual. It differs from the legal notion of the Right to Obscurity, which can be a vague and difficult concept and the matter is not about erasing all information about an individual or making it invisible. Also, the notion of the Right to Be Forgotten is vague, prone to abuse, and subjective. Both legal notions could be used as pretexts for censorship and to avoid social accountability.

Instead, the Right to Remove focuses on specific classes of sensitive personal information that can be removed to preserve an individual's dignity and security, while maintaining other useful data to define an online identity and preserve the right to access information. It is about the right to maintain a composite profile that presents both privacy and accuracy.

On one hand, regulators need to take a more active and central role in these kind of legal and ethical debates. On the other, Internet search engine companies need to be open to a public negotiation of workable solutions. We need more sophisticated technical processes to improve how personal data is handled, flagging data as sensitive,

obfuscating the subject, removing data from the search engine, and a right to updated contextual information. Releasing more information about the volume, character, and classification of removal requests would benefit the public and help inform information policy and the general public. Search engines, data processors, controllers and brokers should apply data protection principles in a more intelligent and ethical way.

The Right to Remove should be coupled with corporate and administrative transparency, detailed guidelines to minimize indiscretion and arbitrariness.

Recent Legal Development in the U.S. for the Right to Remove

In 2015, California recently enacted the “eraser button” law that requires operators of online services to allow minors to remove content they’ve posted on the service.

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB568

In 2015, Blumenthal, Markey, Whitehouse And Franken introduced legislation in the Senate to ensure transparency and accountability in the data broker industry on March 4, 2015. The bill can be tracked under code S.668 and the title Data Broker Accountability and Transparency Act. However, the bill only addresses the trade of data between brokers and does not specify search engine results.

<https://www.congress.gov/bill/114th-congress/senate-bill/668/all-info>

In 2015, 26 States already have Revenge Porn Laws. Mary Anne Franks, who drafted the model legislation and advised legislators in the majority of the states, emphasizes that many of these laws are still deeply flawed. Franks announced that she is working with Congresswoman Jackie Speier (D-CA) on a federal criminal bill.

https://en.wikipedia.org/wiki/Revenge_porn#United_States

In 2015, Consumer Watchdog, a consumers’ rights organization, sent a complaint to the Federal Trade Commission (FTC) in an open letter describing Google’s failure to offer the “Right to Be Forgotten” in the United States, as unfair and deceptive.

<https://www.consumeraffairs.com/news/privacy-group-asks-ftc-to-bring-europes-right-to-be-forgotten-to-the-us-070715.html>

In general, the Federal Trade Commission has brought legal actions against organizations that have violated consumers’ privacy rights, or misled them by failing to maintain security for sensitive consumer information. In many of these cases, the FTC has charged the defendants with violating Section 5 of the FTC Act, which bars unfair and deceptive acts and practices in or affecting commerce. In 2015 the FTC’s Commissioner Julie Brill called for the introduction of a Right to Obscurity in the U.S.

https://www.ftc.gov/system/files/documents/public_statements/637101/150415righttoobscurity.pdf

Background of the legal notion of the Right to Remove.

In the United States:

Historically, the legal notion can be tracked from U.S. Justice Louis Brandeis, who called it "the right to be let alone" in 1890 with the definition of "the Right to Privacy."

In the U.S. Constitution, some amendments provide certain protection; however, it’s not explicitly stated as the right to privacy. The 4th, 5th, and 6th Amendments could be referred to for a Right to Remove personal information from search engines.

The Fair Credit Reporting Act (FCRA) was enacted in 1970 to address increasing concerns in the 1950s and 1960s over the amount and type of sensitive information held by credit reporting agencies.

As a result of the 1989 case U.S. Department of Justice v. Reporters Committee for Freedom of the Press, the United States Supreme Court recognized a privacy interest in "practical obscurity."

Torts for Defamation and Invasion of Privacy are common legal litigation models in states without specific laws on privacy rights. They are exercised through lawsuits alleging invasion of privacy, public disclosure of private facts, and the intentional infliction of emotional distress against individuals. A tort, in common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act.

With expungement rights, some states permit individuals, who are arrested, but not convicted, to expunge their arrest records, that is, to make them unavailable through the state or Federal repositories. Other states permit some convicts to apply for expungements after time has passed from the completion of their sentences.

In Europe:

The legal notion has its roots in the older French concept of the right to oblivion (*droit à l'oubli*).

The European Convention on Human Rights, adopted in 1953, explicitly introduced the right to "respect for private and family life." The right to privacy is defined by the European Convention on Human Rights, article 8 and the Declaration on Human Rights, article 12.

In 2006, the Court of Justice of the European Union in Luxembourg ruled that personal data should be removed from search results on a person's name when outdated, inaccurate, inadequate, irrelevant, or devoid of purpose, and when there is no public interest, with the so called Right to Be Forgotten law.