The Right to be Forgotten: Memory and the Digital Commons

The labyrinth in Greek mythology was where the Minotaur was trapped. A maze so cunningly constructed that its designer Daedalus nearly got lost in it. The defeat of the Minotaur by Theseus was only possible thanks to Ariadne, who gave him a ball of thread so that he could trace his way through the labyrinth.

Sir Edward Burne-Jones. 1861. Tile Design – Theseus and the Minotaur in the Labyrinth.

In considering models that allow us to imagine the 'digital' the labyrinth may be the most apt. The labyrinth is structured in order to disorient one spatially and logically. It does not follow a linear path, it doubles-back, traverses, fragments, and distracts. As Jalal Toufic says about labyrinths in his book Vampires, "The labyrinth unsettles the one 'in' it, so that either he or she becomes explicitly lost to the lost others there…"

To be in the labyrinth is to not know you are in the labyrinth. The labyrinth is not a space where the human subject is at the center, but rather a space that decenters and directs us by perpetually shifting its configuration. It is not a static singular space to be mastered but dynamic space(s) of struggle.

The Right to be Forgotten is a 2014 ruling decided by the EU Court in Spain that allows EU citizens to request the removal of links to web-pages or other content from search results generated by a name-based search query, provided that the requested items are inaccurate, inadequate, irrelevant or no longer relevant, etc. The original lawsuit concerned Google and a Spanish citizen who was very upset that a decade old newspaper article regarding the repossession of his house after he defaulted on loans was

one of the top items displayed in search results when he Googled his own name. He argued that the prominence given to this information in search results was damaging to his personal and professional reputation and that Google should remove it. While the case involved only Google the ruling extends to any search engine and makes enforcement of the law, in the form of soliciting, reviewing, and granting or denying removal requests, the responsibility of search engine companies. Google currently enforces the ruling by using IP addresses to geolocate search queries and then displaying edited results that correspond to the country of the request location.

It is very easy to get caught up in the details of this case, but there are some more general issues it illuminates regarding how we conceive of memory within the digital sphere and how the dominant forms of the internet function and are structured. All of which need to be addressed if we want to conceive of an oppositional space like a digital commons.

Digitized and realigned fresco fragments from Eremitani Church in Padua, Italy.

First, the name of this case is misleading. It is not really a “Right to be Forgotten” so much as it is a “Right Not to be Remembered in a Certain Way”. The ruling does not require the removal of webpages or content, only that the links to that content not be displayed in search results. Memory in this sense is considered not as a cognitive ability so much as it is something that exists external to us. A record. Which means it is a social object. But in this context the ontological existence of the record isn’t nearly as important as its locatability. Simply put, the ruling relies on the assurance that if it can’t be Googled it doesn’t exist. This not only gives us an idea of the extent to which search engines have established dominance culturally over how we use the Internet, but also presents epistemological problems regarding

knowledge production. ‘I Google, therefore I know’ significantly reduces the possibility of contesting the meaning of events and supplants it with a slick empiricism.

Second, there is the way it has been enforced. By using the IP addresses of search queries to geolocate them and amend search results accordingly we see an imposition of an old map, the physical borders of a nation, onto a previously thought borderless and intangible space. In doing so, it divides and fractures that space in a way that reinforces the nation-state and its juridical authority.

Lastly, the Right to be Forgotten conceives of memory exclusively in individual terms. The questions at this point are: what are the historical conditions that have contributed to the emergence of this case, what are the determining factors that have made individual rights of property and privacy the only viable modes of redress, and is it possible to reconceive of memory and the digital along notions of collective rights?